Dec 22, Reversed. Ch. J.

Ch. Jus.

SUPREME COURT OF THE UNITED STATES.

No. ~~265~~. ~~180~~. 89. ~~64~~. ~~47~~.

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THOS. J. DAVIDSON, PL'FF IN ER.,

vs.

W. L. LANIER, CURATOR OF JOHN J. McMAHON, DEC'D.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

GEO. S. GIDEON, printer, 511 Ninth street, Washington, D. C.

579

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GIDEON, Print.

Exemplification.

W. L. Lanier, Adm'r,
vs.
Josiah Locke and Thos. J. Davidson.

Pleas had at a District Court of the United States, for the northern district of Mississippi, begun and held at the town Pontotoc, in and for said district, on the first Monday of June, 1859: present, the Hon. Samuel J. Gholson, judge of said court.

Be it remembered, that on the 13th day of November, 1857, W. L. Lanier, adm'r, sued out of the office of the clerk of the district court of the United States, for the northern district of Mississippi, his certain summons, in the words and figures following, to wit:

Summons.

United States of America,
Northern District of Mississippi.

The President of the United States to the marshal of the northern district of Mississippi, greeting:

We command you without delay to summon Josiah Locke and Thomas J. Dividson, citizens of the northern district of Mississippi, that they be and appear before the district court of the United States, to be held at the town of Pontotoc, in and for the northern district of Mississippi, on the first Monday of December next, to answer to W. L. Lanier, curator and administrator of the estate of John J. McMahon, deceased, who is a citizen of the State of Louisiana, of a plea of trespass on the case upon promises to his damage four thousand dollars, and that they do file their plea or defence with the clerk of said court on or before the meeting of the same, or judgment will be given against them by default, and have then there this writ.

Witness the Honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at Pontotoc, the first Monday of June, A. D. 1857, and 81st year of the independence of the United States.

Issued the 13th day of November, 1857.

R. W. EDMONDSON, *Clerk.*

Upon which said summons is an endorsement by the attorney, in the words and figures following, to wit:

Action of assumpsit brought to recover the amount of those bills of exchange, drawn by defendants and one Jos. R. Ferguson, who is not sued, dated the 15th July, 1856, at Memphis, Tenn., payable eight months after date to the order of J. B. Ellis, for one thousand dollars each, with eight per cent. interest from maturity until paid, directed to J. J. McMahon, New Orleans, La., and endorsed by said J. B. Ellis to Richard M. Kirby, and by him to plaintiff's intestate in his lifetime; and of $4,000 for money paid, laid out, and expended for the use of said defendants by plaintiff's intestate in his lifetime; and for $4,000 for money lent and advanced to def'ts by the same in his lifetime; and for $4,000 had and received by def'ts to the use of the same in his lifetime; and for $4,000 for so much due on an account stated between defendants and said plaintiff's intestate in his lifetime. The said several sums of money is the amount demanded in this suit.

Declaration filed at the time of issuing this writ.

HUGH R. MILLER,
Att'y for Pl'ff.

The marshal made his return in the words and figures following to wit:

Rec'd 11th Nov., 1857. Executed on defendant, Davidson, 26th Nov., 1857.

W. H. H. TISON, *Marshal.*
By E. W. ROOTES, *D. M.*

Executed on defendant, Locke, Nov. 30th, 1857.

W. H. H. TISON,
Marshal Northern Dist. Mississippi.

Declaration.

At the issuing of said summons, pl'ffs, by att'y, filed his declaration, in the words and figures following, to wit:

District Court, December Term, 1857.

UNITED STATES OF AMERICA,
Northern District of Mississippi.

William L. Lanier, curator and administrator of the goods and chattels, rights, and credits, which were of John J. McMahon, deceased, late a citizen of the State of Louisiana, the said administrator being a citizen of the State of Louisiana, by attorney, complains of Josiah Locke and Thomas J. Dividson, who are citizens of the State of Mississippi, resident in said northern district of Mississippi, of a plea of trespass on the case upon promises.

For that whereas the said defendants, by the way and style of "Thos. J. Dividson" and "J. Locke," together with one Jos. R. Ferguson, who is not sued in this action heretofore, on the fifteenth day of July, A. D. 1856, at Memphis, Tennessee, to wit, at the district aforesaid, made their certain bill of exchange in writing, of the date aforesaid, and then and there directed the said bill of exchange to Jno. J. McMahon, New Orleans, meaning thereby New Orleans, in the State of Louisiana; by which said bill of exchange the said defendants then and there requested the said John J. McMahon, eight months after the date of that their first of exchange, (second unpaid,) to pay to the order of J. B. Ellis the sum of one thousand dollars, value received, with eight per cent. interest from maturity until paid, and then and there delivered the said bill of exchange to said J. B. Ellis, who then and there endorsed the same, by the way and style of "J. B. Ellis, Ripley, Miss.," to Richard M. Kirby, who then and there endorsed the same, by the way and style of "Rich'd M. Kirby," to plaintiff's intestate.

And whereas also heretofore, to wit, on the 15th day of July, A. D. 1856, at Memphis, Tenn., to wit, at the district aforesaid, said defendants, by the way and style of "J. Locke and Thos. J. Davidson," together with one Jos. R. Ferguson, who is not sued in this action, made their certain other bill of exchange of that date, and then and there directed the same to one Jno. J. McMahon, New Orleans, La., meaning thereby New Orleans, in the State of Louisiana, and thereby then and there requested said Jno. J. McMahon, eight months after said date of that their first of exchange, second unpaid, to pay to the order of J. B. Ellis one thousand dollars, value received, with eight per cent. interest from maturity until paid, and then and there delivered the said bill of exchange to said J. B. Ellis, who then and there endorsed and delivered the same, by the way and style of J. B. Ellis, Ripley, Miss., to Richard M. Kirby, who then and there endorsed and delivered the same, by the way and style of "Rich'd M. Kirby," to plaintiff's intestate.

And whereas also heretofore, on the 15th day of July, A. D. 1856, at Memphis, Tenn., to wit, at the district aforesaid, said defendants, by the way and style of "J. Locke and Thos. J. Davidson," together with one Jos. R. Ferguson, who is not sued in this action, made their certain other bill of exchange in writing of that date, and then and there directed the same to one Jno. J. McMahon, New Orleans, La., meaning thereby New Orleans, in the State of Louisiana, and thereby then and there requested said Jno. J. McMahon, eight months after said date of that their first of exchange, second unpaid, to pay to the order of J. B. Ellis one thousand dollars, value received, with eight per cent. interest from maturity until paid, and then and there delivered said bill of exchange to said J. B. Ellis, who then and there endorsed and delivered the same to Richard M. Kirby, who then and there, by the way and style of "Rich'd M. Kirby," endorsed and delivered the same to plaintiff's intestate.

And plaintiff avers, that afterwards, when said several bills of exchange became respectively due and payable, the same were severally duly presented to said Jno. J. McMahon, to whom the same were directed at New Orleans, Louisiana, for payment, and payment thereof demanded, who then and there refused to pay each and all of said bills of exchange, for the want of funds of the drawer thereof.

And plaintiff further avers, that each of said bills of exchange were then and there duly protested for non-payment; of all which said defendants then and there had due notice. Whereby said defendants became liable to pay to said plaintiff's intestate in his lifetime the amount of each and all of said several bills of exchange, and being so liable, said defendants undertook and promised to pay the same.

And whereas also said defendants heretofore, to wit, on the 8th day of March, A. D. 1857, at the district aforesaid, were indebted to said Jno. J. McMahon, deceased, in his lifetime, in the further sum of four thousand dollars, for so much money paid, laid out, and expended before that time by said John J. McMahon, to and for the use of said defendants, and at their request; and in the further sum of four thousand dollars, for so much money before that time lent and advanced by said John J. McMahon to said defendants, at their like request; and in the further sum of four thousand dollars, for money before that time had and received by said defendants, to and for the use of said John J. McMahon; and in the further sum of four thousand dollars, for so much money then and there found to be due from said defendants to said John J. McMahon, on an account then and there stated between them; and being so indebted, said defendants undertook and promised said John J. McMahon, in his lifetime, to pay him said last mentioned several sums of money on request. Nevertheless said defendants, although often requested, have not, nor has either of them, paid said sums of money, or any or either of them, to said John J. McMahon, in his lifetime, or to said plaintiffs; but so to do have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of plaintiff four thousand dollars; and therefore he sues. And said plaintiff brings here into court his letters of administration, showing his authority, &c.

HUGH R. MILLER,
Attorney for Plaintiff.

Order of Court, Dec., 1857.

And afterwards, to wit, on the 10th day of December, 1857, the following proceedings were had, to wit:

W. L. Lanier, Adm'r, &c.,
v.
Josiah Locke et al.

Thursday, December 10th, 1857.

This cause is continued, and leave by the court granted to plead.

Order of Court, June, 1858.

And afterwards, to wit, on the 10th day of June, 1858, the following proceedings were had, to wit:

W. L. Lanier, Adm'r, &c.,
v.
Josiah Locke et al.

Thursday, June 10th, 1858.

Cause continued on affidavit of defendant.

Defendant's Plea and Affidavit.

And afterwards, to wit, on the 8th day of December, 1858, def't filed his plea, in the words and figures following, to wit:

U. S. Dist. Court at Pontotoc, Miss.—December Term, 1858.

W. L. Lanier, Adm'r, &c.,
v.
Thos. J. Davidson.

And the said defendant, by attorney, comes, &c.; and for plea, says, actio non, because, he says, he never undertook or promised in manner and form as the said plaintiff hath above declared against him; and of this he puts himself upon the country, &c.

ALCORN, WATSON, & DAVIS,
Att'ys for Def't.

The said defendant makes oath that the above plea is true in substance and in fact. He further states that the bills of exchange sued on were signed by this defendant and the other parties thereto while the same were wholly in blank, as to date, time payable, amount, names of payee and drawee, and residence of drawee, and in this blank condition were delivered into the hands of one R. M. Kirby, who, affiant is informed and believes, sent them by mail, in this blank condition, to the plaintiff's intestate, said J. J. McMahon. Affiant further states that at the time said bills were signed it was agreed by and between all the parties thereto that they might be used and filled up to the amount of $1,000 00 each, to aid the said R. M. Kirby, who was then acting president of the Cincinnati & Little Rock Slate Company, in reducing and taking up the outstanding circulation of the said company. And affiant states that he never in any manner assented to or agreed for the said bills to be filled up and used for any other purpose whatever.

Affiant also states that after the said bills came into the hands of said McMahon, and while they were wholly in blank as aforesaid, he, through a proper agent for that purpose, notified and forewarned the said McMahon that said R. M. Kirby had no right to use the said drafts or bills with said McMahon for the purpose he had attempted, and notifying and forewarning the said McMahon not to fill up said blank bills ; that, notwithstanding said notification, said McMahon caused the said blanks to be filled up as they now appear, without any consent or approbation of this defendant.

Affiant further states that at the time said bills were signed by this defendant, and at the time the same were delivered into the hands of said McMahon, there was no stipulation therein as to the rate of interest the same should bear, nor was there any blank or space left therein where the same was to be or could be inserted without interlineation, nor was any agreement then or at any time made between the parties, nor by this defendant, in relation to the rate of interest ; but, affiant states, that the words "with eight per cent. interest from maturity until paid" have been interlined and inserted therein since the same went into the hands of the said McMahon, wholly without the authority, approbation, or consent of this defendant. The defendant therefore says that the said bills as they now appear are not his act and deed, and prays that this be taken and allowed as a part of his foregoing plea of non-assumpsit.

THOS. J. DAVIDSON.

Sworn to before me, Dec'r 8th, 1858.

R. W. EDMONDSON, *Clerk.*

Order of Court, Jan'y, 1859.

And afterwards, to wit, on the 10th day of January, 1859, the following proceedings were had, to wit:

W. L. Lanier, Curator, &c.,
v.
Josiah Locke et al.

Monday, January 10th, 1859.

Came the parties, by attorneys, and continued this cause, by consent.

Order of Court, June, 1859.

Order of court had at June term, 1859, is in the words and figures following, to wit:

Wm. L. Lanier, Curator, &c.,
v.
Josiah Locke et al.

Thursday, June 9th, A. D. 1859, 4th day.

This day came the parties, by their attorneys, and the plaintiff suggested the death of the defendant, Locke ; and thereupon this cause was abated as to defendant, Josiah Locke. And then came a jury of good and lawful men, to wit, jury No. , being Henry C. Ferris and eleven others, tried, sworn, and empanelled, well and truly to try the issue joined between the parties; and thereupon this cause was continued over till to-morrow morning.

W. L. Lanier, Curator, &c.,
vs.
Josiah Locke et al.

Friday, June 10th, A. D. 1859, 5th day.

This day again came the parties, by their attorneys, and also came the jury, tried, sworn, and empanelled, at a former day of the present term of this court, to try the issue joined between the parties, who, upon their oaths for their verdict say, they find the issue in favor of the plaintiff, and assess his damages at the sum of three thousand five hundred and thirty-four $\frac{27}{100}$ dollars; it is therefore considered by the court that the plaintiff recover of the defendants the damages by the jury aforesaid assessed, together with all costs in this behalf expended.

Motion for a new trial.

Motion for a new trial is in the words and figures following, to wit:

W. L. Lanier, Curator of J. J. McMahon, dec'd,
vs.
Tho's J. Davidson.
No. 1,816.

The defendant moves the court to set aside the verdict of the jury and grant a new trial: 1st. Because the verdict of the jury was contrary to law and evidence. 2d. Because the verdict was contrary to the instructions given by the court. 3d. Because the court charged the jury erroneously upon the law of the case. The defendant does not waive his right to a writ of error by making this motion, but will insist on his right to the same, notwithstanding this motion, in event it is overruled.

JN. W. C. WATSON & O. DAVIS,
Atty's for Def't.

Order of Court, June 13, 1859.

And on the 13th day of June, 1859, the following proceedings were had, to wit:

W. L. Lanier, Curator, &c.,
vs.
Tho's J. Davidson.

Monday, June 13th, 1859, 8th day.

This day came on to be heard the motion in this cause to grant a new trial, and thereupon said motion was taken under advisement, and the judgment heretofore rendered in the case suspended, until the decision of the court in the premises.

Order of Court, December, '59.

And afterwards, to wit, on the 5th day of December, 1859, the following proceedings were had, to wit:

W. L. LANIER, Curator, &c.,
vs.
THO'S J. DAVIDSON.

Monday, December 5th, A. D. 1859.

This day came the parties, by their attorneys, and the motion of the defendant in this cause made at the last term of the court to set aside the verdict and to grant a new trial having been then taken under advisement by the court, and the court having duly considered the same, doth now order and adjudge that the same be overruled and a new trial herein refused.

Bill of Exceptions.

Defendant then filed his bill of exceptions in the words and figures following, to wit:

WM. L. LANIER, Adm'r,
vs.
J. LOCKE AND THO'S J. DAVIDSON.
No. 1,816.—Bill of Exceptions.

Be it remembered, that on the trial of this cause, the plaintiff, to sustain the issue on his part, read in evidence before the jury the bills of exchange sued on, in the words and figures following, to wit:

Bill of Exchge.

Exchge. for $1,000.

MEMPHIS, TENN.,
15*th July*, 1856.

Eight months after date of this our first of exchange, (second unpaid,) pay to the order of J. B. Ellis one thousand dollars, value received, and charge the same to account of your obd't serv't, with eight per cent. interest, from maturity until paid.

JOS. R. FERGUSON,
J. LOCKE,
THO'S J. DAVIDSON.

To JNO. J. MCMAHON,
New Orleans, La.

Endorsment, &c.

J. B. ELLIS,
Ripley, Miss.
RICH'D M. KIRBY.

Protest.

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest be it known, that on this eighteenth day of March, in the year one thousand eight hundred and fifty-seven, at the request of F. D. Bell, esq., holder of the original draft, whereof a true copy is on the reverse hereof written, I, Daniel Israel Ricardo, a notary *of* public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said draft to Mr. J. J. McMahon, the drawee, at his office, in the city, and demanded payment thereof; was answered that the same could not be paid for the want of funds of the drawee; whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft as against all others whom it may or doth concern, for all exchange, re-exchange, damages, cost, or charges, and interest suffered or to be suffered for want of payment of the said draft.

Thus done and protested in the presence of Ernest Petitpan and Paul Waterman, witnesses.

In testimony whereof, I grant these presents under my signature and impress of my seal of office, at the city of New Orleans, on the day and year first above written.

D. J. RICARDO,
Notary Public.

Bill of Exchange.

Exch'ge for $1,000. MEMPHIS, TENN.,
15 *July*, 1856.

Eight months after date, this our first of exchange, (second unpaid,) pay to the order J. B. Ellis one thousand dollars $_{\overline{100}}$, value received, and charge the same to account of your ob't serv'ts, with eight per cent. interest, from maturity until paid.

JOS. R. FERGUSON,
J. LOCKE,
THO'S J. DAVIDSON.

To JOHN J. MCMAHON,
New Orleans, La.

Endorsed: J. B. ELLIS, *Ripley, Miss.*
RICH'D M. KIRBY.

I, the undersigned notary, do hereby certify that the parties to the draft, whereof a true copy is above written, have been duly notified of the protest thereof by letters to them, by me written and addressed, dated on this day of the said protest, and served on them respectively, in the manner following, viz:

Notices to Jos. R. Ferguson, Tho's J. Davidson, drawees, and J. B. Ellis, Rich'd M. Kirby, endorsers, directed to them at Memphis, Tenn., and notice to J. Locke, drawer, addressed to him at Friar's Point, Miss., at the request of the holder, and the same were deposited by me, notary, in the post office of this city, on the day and date thereof, postage pre-paid.

In faith whereof, I have hereunto signed my name, together with Ernest Petitpan and Paul Waterman, witnesses, at New Orleans, this eighteenth day of March, eighteen hundred and fifty-seven.

(Signed) ERNEST PETITPAN,
PAUL WATERMAN.
D. J. RICARDO,
Notary Public.

I certify the foregoing to be a true copy of the original draft, protest, and services of notices of protests in my current register of protest.

New Orleans, 18th March, 1857.

D. J. RICARDO,
N. Pub.

Second Bill of Exchange.

Second bill of exchange read in evidence by pl'ff is in the words and figures following, to wit:

Exch'ge for $1,000. MEMPHIS, TENN.,
July 15th, 1856.

Eight months after date, of this our first of exchange, (second unpaid,) pay to the order of J. B. Ellis one thousand dollars, value received, and charge the same to account of, with eight per cent. interest, from maturity until paid,

Your ob't serv'ts,
JOS. R. FERGUSON,
J. LOCKE,
THO'S J. DAVIDSON.

To JNO. J. MCMAHON,
New Orleans, La.

Endorsed: J. B. ELLIS,
Ripley, Miss.
RICH'D M. KIRBY.

Protest.

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest be it known, that on this eighteenth day of March, in the year one thousand eight hundred and fifty-seven, at the request of F. D. Bell, holder of the original draft, whereof a true copy is on the reverse hereof written, I, Daniel Israel Ricardo, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said draft to Mr. J. J. McMahon, the drawee, at his office, in this city, and demanded payment thereof; was answered that the same could not be paid for want of funds of the drawer. Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest, suffered or to be suffered, for want of payment of the said draft.

Thus done and protested in the presence of Ernest Petitpan and Paul Waterman, witnesses.

In testimony whereof, I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

D. J. RICARDO,
Notary Public.

Exch'ge for $1,000. MEMPHIS, TENN.,
July 5th, 1856.

Eight months after date, of this, our first of exchange (second unpaid), pay to the order of J. B. Ellis one thousand dollars $\frac{}{100}$, value received, and charge the same to account of your ob't serv't, with eight per cent. interest from maturity until paid.

JOS. R. FERGUSON,
J. LOCKE,
THO'S J. DAVIDSON.

To JNO. J. MCMAHON,
New Orleans, La.

Endorsed:

J. B. ELLIS, *Riply, Miss.*
RICH'D M. KIRBY.

I, the undersigned, notary, do hereby certify that the parties to the draft, whereof a true copy is above written, have been duly notified of the protest thereof by letters to them, by me written and addressed, dated on the day of the said protest, and served on them respectively in the manner following, viz:

Notices to Jos. R. Ferguson, Thos. J. Davidson, drawers, and J. B. Ellis, Rich'd M. Kirby, endorsers, directed to them at Memphis, Tenn., and notice J. Locke, drawer, addressed to him at Friar's Point, Miss., at the request of the holder, and the same were deposited by me, notary, in the post office of this city on the day and date thereof, and postage paid.

In faith whereof, I have hereunto signed my name, together with Ernest Petitpan and Paul Waterman, witnesses, New Orleans, this eighteenth day of March, eighteen hundred and fifty-seven.

(Signed) ERNEST PETITPAN,
PAUL WATERMAN.
(Signed) D. J. RICARDO,
Not. Pub.

I certify the foregoing to be a true copy of the original draft, protest, and services of notices of protest in my current register of protests.

New Orleans, 18th March, 1857.

D. J. RICARDO,
N'y Pub'c.

Third Bill of Exchange.

Third bill of exchange, read in evidence by pl'ff, is in the words and figures following, to wit:

Exch'ge for $1,000. MEMPHIS, TENN.,
July 15th, 1856.

Eight months after date of this, our first of exchange, (second unpaid,) pay to the order of J. B. Ellis one thousand dollars, value received, and charge the same to account of, with eight per cent. interest from maturity until paid,

THOS. J. DAVIDSON,
JOS. R. FERGUSON,
J. LOCKE.

To JNO. J. MCMAHON,
New Orleans, La.

Endorsed:

J. B. ELLIS, *Ripley, Miss.*
RICH'D M. KIRBY.

Protest.

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest be it known, that on this eighteenth day of March, in the year one thousand eight hundred and fifty-seven, at the request of F. D. Bell, holder of the original draft, whereof a true copy is on the reverse hereof written, I, Daniel Israel Ricardo, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said draft to Mr. J. J. McMahon, the drawee, at his office in this city, and demanded payment thereof; was answered, that the same could not be paid for want of funds of the drawer; whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest, suffered, or to be suffered, for want of payment of the said draft. Thus done and protested in the presence of Ernest Petitpan and Paul Waterman, witnesses.

In testimony whereof, I grant these presents under my signature and the impress of my seal at office, at the city of New Orleans, on the day and year first above written.

D. J. RICARDO,
Notary Public.

Exch'ge for $1,000.
Memphis, Tenn.,
July 15*th*, 1856.

Eight months after date of this, our first of exchange, (second unpaid,) pay to the order of J. B. Ellis one thousand dollars $\frac{}{100}$, value received, and charge the same to account, with eight per cent. interest from maturity until paid.

THOS. J. DAVIDSON,
JAS. R. FERGUSON,
J. LOCKE.

To Jno. J. McMahon,
New Orleans, La.

Endorsed:

J. P. ELLIS, *Ripley, Miss.*
RICH'D M. KIRBY.

I, the undersigned, notary, do hereby certify that the parties to the draft, whereof a true copy is above written, have been duly notified of the protest thereof by letters to them, by me written and addressed, dated on the day of the said protest, and served on them respectively in the manner following, viz:

Notices to Jos. R. Ferguson, Thos. J. Davidson, drawers, and J. B. Ellis, Rich'd M. Kirby, endorsers, directed to them at Memphis, Tenn., and notice to J. Locke, drawer, addressed to him at Friar's Point, Miss., at the request of the holders, and the same were deposited by me, notary, in the post office of this city, on the day and date hereof, (postage paid.)

In faith whereof, I have hereunto signed my name, together with Ernest Petitpan and Paul Waterman, witnesses, at New Orleans, this eighteenth day of March, eighteen hundred and fifty-seven.

(Signed) D. J. RICARDO,
Not. Pub.

(Signed) Ernest Petitpan,
" Paul Waterman.

I certify the foregoing to be a true copy of the original draft, protest, and services of notices of protest, in my current register of protests.

New Orleans, 18th March, 1857.

D. J. RICARDO, *No. Pub.*

Agreement.

The plaintiff then read in evidence before the jury the agreement following, in the words and figures, to wit:

W. L. LANIER, Curator of J. J. McMahon, dec'd,
vs.
JOSIAH LOCKE and T. J. DAVIDSON.

In this cause it is agreed that all the testimony now on file be read as evidence, to wit: the depositions of Stickney, Slover, Jones and Kirby, with the exhibits attached to each; also the three bills of exchange sued on, and the protests and certificates of the notaries attached to them, and that defendant was duly notified of demand and non-payment, protest, &c., the latter to have the same weight as if the matters stated in them were in the form of depositions, duly taken, of the notary public, May 23d, 1859; and further, that under the plea of non-assumpsit, the defendants may give in evidence any matter which would be competent under any sworn special plea.

O. DAVIS, *for Def't.*
MILLER, *for Pl'ff.*

Here the plaintiff closed his case.

The defendant then read in evidence before the jury the depositions of R. M. Kirby, D. H. Jones and L. D. Stickney, W. H. Slover, in the words and figures following, to wit:

Deposition of R. M. Kirby.

UNITED STATES OF AMERICA,
Northern District of Mississippi.

The President of the United States to G. P. Fonte, Esq., greeting:

Know ye, that in confidence of your prudence and fidelity, you have been appointed, and you, or any one or more of you, are empowered to examine on oath Richard M. Kirby, a witness on behalf of the defendants in a case depending in the district court of the United States for the district aforesaid, wherein W. L. Lanier, curator, &c., of J. J. McMahon, dec'd, is plaintiff, and Josiah Locke and T. J. Davidson are defendants, upon the interrogatories and X-interrogatories hereto annexed, and you are hereby commanded, at such time and place as you shall appoint, to cause the said witness to come before you, and him diligently to examine on oath upon said interrogatories, and such examination reduced to writing, with every exhibit or voucher relative thereto in your possession, together with this writ, and said interrogatories you seal up and direct and transmit, in the safest and most convenient manner, to the clerk of our said district court, at Pontotoc, Miss.

Witness the Honorable Samuel J. Gholson, judge of the district court of the United States for the northern district of Mississippi, at Pontotoc, the first Monday of December, A. D. 1858, and the year of the independence of the United States.

Issued the 8th day of April, 1859.

R. W. EDMONDSON, *Clerk.*

Interrogatories.

In the United States District Court at Pontotoc, Mississippi.

W. L. LANIER, Curator of J. J. McMahon, dec'd,
vs.
JOSIAH LOCKE and THOS. J. DAVIDSON.

Interrogatories to be propounded by defendants to Richard M. Kirby, a witness, who resides in the State of Tennessee, at Memphis:

Int. 1st, by def'ts. Are you acquainted with the parties to this suit?

Int. 2d, by same. Do you or not know of any parties having been at any time engaged in erecting, establishing, or putting in operation any banking institution in the State of Tennessee; if so, state the name of such institution, when and where; who was its president and other officers; and state whether or not said J. J. McMahon, or defendants, had any connection therewith; and if so, state everything you know in relation to the connection of either of said parties therewith, fully and in detail.

Int. 3d, by same. Look upon the copy of the bill of exchange shown to you at the time of taking your deposition, which is a true copy of one of the three bills of exchange sued on in this action, with its filling up and interlineations and endorsements, and state whether or not you know anything in relation to the origin and history of said bills of exchange; if so, state fully, and in detail, all about them.

Int. 4th, by same. If you answer that said bills of exchange were signed in blank, state who was authorized to fill them up; if used, for what amounts; and state whether or not any stipulation or agreement was made between the parties, or inserted in said bills, as to the rate of interest they were to bear after maturity.

Int. 5, by same. State anything else you may know important to either party to this suit.

O. DAVIS,
Att'y for Def'ts.

To W. L. Lanier, curator of J. J. McMahon, dec'd, or to Hugh R. Miller, his att'y of record:

Take notice, that in ten days after service of this notice on you, and filing the same, with the foregoing interrogatories attached, in the office of the clerk of the United States district court at Pontotoc, Missi., we shall apply to the clerk of said court for a commission to issue, to take the deposition of said Richard M. Kirby on the foregoing interrogatories; which, when taken, we shall offer in evidence in the suit now pending in said district court, wherein you, said W. L. Lanier, as curator aforesaid, are plaintiff, and we are defendants. You can file cross-interrogatories, if you think proper.

JOHN W. C. WATSON,
And O. DAVIS,
Att'ys for Def'dts, Josiah Locke and T. J. Davidson.

Upon which said notice is an endorsement, in the words and figures following, to wit:

Service of the within acknowledged, and filing in the clerk's office waived, and agreed that dep'on may be taken on these, on the cross-inter'gts. annexed.

April 18th, 1859.

HUGH R. MILLER,
Att'y for Pl'ff.

W. L. Lanier, Curator, &c.,
vs.
Josiah Locke and T. J. Davidson.

Cross-interrogatories to be propounded to Richard M. Kirby, a witness on behalf of defendants in the above-stated case:

X-int'y 1st. Where did said J. J. McMahon reside and do business at the date of the transaction referred to in your answer to the direct interrogatories?

X-intg. 2d. If you answer defendants' interrogatory that you know anything of the bill of exchange inquired of, state for what consideration the said bill was given, who advanced money upon it, or to whom was the money due that it was given to secure?

X-intg. 3d. Was said bill of exchange filled up or in blank at the time it was drawn, and to whom was it delivered after drawn?

X-intg. 4th. Did said J. J. McMahon advance or pay money for defendants, or for *defendants*, together with others; and if so, at what dates, and to what amounts?

X-intg. 5th. Where did defendants reside, and where was their place or places of business at the time referred to?

X-intg. 6th. State all you know in relation to the drawing of said bill of exchange, the purpose for which it was delivered to said McMahon, and the consideration thereof.

X-intg. 7th. State all you know relative to the matters in controversy in this case.

HUGH R. MILLER,
Att'y for Pl'ff.

UNITED STATES OF AMERICA,
State of Tennessee, City of Memphis.

Be it known, that I, G. P. Fonte, by virtue of the annexed commission to me directed, caused Richard M. Kirby, the witness named therein, to come before me, at my office, in said city of Memphis, State of Tennessee, on this the 29th day of April, 1859, who being by me first duly sworn, testified as follows, to wit:

To the 1st interrogatory he answers, I am.

Ans. 2. I moved to Memphis in November, 1855. About the first of January, 1856, I became connected with the Cincinnati and Little Rock Slate Company, the object of which company was to do a banking business in the city of Memphis, Tennessee. I was soon after my connection with the company chosen as its president, and H. M. True was chosen the secretary and cashier for the company in the city of Memphis. The company needed funds and financial facilities. I went to New Orleans for the purpose of making suitable arrangements for the interest of the company, and explained our plan to J. J. McMahon, who agreed to accept our drafts or bills at different times, to aid us in our operations. In pursuance of that agreement, I drew divers of drafts in favor of L. D. Stickney, H. M. True, and Jos. R. Ferguson, which were accepted by the said McMahon, and at the same time we made remittances to him at divers times till the early part of the summer, when our indebtedness to him on this account amounted to about eleven thousand dollars.

In consideration of the above acceptances, the company was to pay McMahon his usual charges for accepting for us; also to act as our agent for the redemption of the money or issues of the company in New Orleans, and also to use the money or issues of the company to advance on or buy cotton on Red river. In pursuance of this agreement, I sent him twelve thousand dollars of the issues of the company to perfect the agreement, which he subsequently told me he made an effort to use.

J. Locke was a member of the company when I became connected with the company some time in February, 1856; I think about the middle. Davidson was connected with the company as a stockholder; he bought five thousand dollars of the stock. Some few months after taking this stock, Davidson and Dr. J. B. Ellis, who was a stockholder to the same amount, and taken at the same time with Davidson, became dissatisfied, and requested to withdraw from the company, and requested me to give them up their notes which they had given for their stock, and had not paid. In compliance with their request, I gave them up their notes.

Answer 3d. I know about the making of the bills of exchange; it occurred as follows: After Davidson and Ellis withdrew from the company, it was necessary for the company to raise money, or have a certainty of obtaining it, to protect the circulation. It was agreed that six thousand dollars would be sufficient for any emergency; the bills were signed in blank by the parties, to be filled up and used at my discretion, supposing that it would only be necessary to use then one thousand dollars at a time. After this arrangement, it became necessary for me to be absent for some time on business of importance for the company. On my return I found that H. M. True, the secretary and treasurer of the company, had *stold* from the company a large amount of money from the company; and not knowing at that time how our account stood with McMahon, I sent him the blank bills, hoping that he might be able to protect himself against the amount which he had accepted for the company, the proceeds of which had been stolen from the company by True.

Answer 4. They were signed in blank, except the engraving; I was authorized to fill them up for one thousand dollars each; there was no agreement made between the parties nor inserted in those bills, as to the rate of interest they were to bear after maturity.

Answer 5. I believe I have answered everything I know that would be of importance to either party in this suit.

Answer to Cross-interrogatories.

Ans. 1. J. J. McMahon did business in New Orleans, La., as a commission merchant.

Ans. 2. After T. J. Davidson and J. B. Ellis withdrew from the company, they agreed to loan me their credit for the purpose of aiding me to protect the credit of the company, in consideration of which they signed the bills in blank for six thousand dollars, and left them with me, to be used as stated in third interrogatory. Nobody advanced money on these bills at the time the bills were signed and left with me. I knew of no special debt against the company; they were more particularly given to guard against sudden emergencies in protecting the issue of the company.

I kept the bills some time in possession, and after finding the company had been robbed, and being satisfied the company was owing McMahon a debt, the am't I did not know at that time, I sent him forward the bills, being the only security I had to offer him as a protection against loss.

Ans. 3. They were in blank, except the engraving, and were delivered to me.

Ans. 4. McMahon advanced money for the slate company, as stated in the account *render* by Jones, to which I refer for amount and dates.

Ans. 5. The defendants resided and did business in Mississippi.

Ans. 6. I refer to my previous answers.

Ans. 7. I believe I have answered all I know of importance to this suit.

Interrogatories propounded by Pl'ffs in chief, by consent.

Int. 1st. To what am't, and in what way was McMahon interested in the Cincinnati and Little Rock Slate Company, and why did he accept the bills of exchange sued on?

Ans. 1st. In my second answer in chief, I have explained McMahon's connection with the company, and the reason he gave his acceptances.

Int. 2d. Was there any money, notes, or other effects or accounts placed by you in the hands of any one for the payment, or part payment, of the debts due McMahon, with the knowledge or consent of any of the parties belonging to the C. and L. S. Co.? If so, where placed, and by whom, and to what am't, and give a history of the transaction; if the other members, defendants, knew nothing of it at the time, afterward, and when def'ts had found out what you had done with the claims so placed, did they object or recognise it?

Ans. 2d. After the failure of the company I placed in the hands of J. Locke a government claim for about seven thousand dollars, which was to be paid by a party in Little Rock, Ark. Locke proposed to go to Little Rock and collect the money, and after paying twenty-five hundred dollars to A. C. Blair, the balance was to be paid to J. J. McMahon. Locke disposed of the claim; how much money he received on the claim I know not, but feel satisfied he has never paid over any of the proceeds of the claim as he promised. None of the other members of the company knew anything of the transaction until after Locke had disposed of the claim and had failed to pay over the money as promised. The other members of the company did not object to my having placed the claim in Locke's hands, and believed he would pay over the money, as he frequently promised, to McMahon.

Int. 3d. In the passing of the claims out to Locke, and having charge of the blank bills of exchange, did you act as president of the co., or in what capacity were you acting, and was it in the usual mode of transacting business for the co.; where is this Locke, and what connection had he with the company?

Ans. 3. I was the representative of the company; the claims and effects of the company were all left in my hands for the purpose of collecting and liquidating the indebtedness of the company. Locke lived at Friar's Point, Mississippi; I understand he is now dead; he was one of the company, and proposed to aid me in collecting the claims to pay the indebtedness of the company, was the reason I gave him the claim to collect; and further this deponent saith not.

RICH'D M. KIRBY.

It is agreed that the questions and answers by pl'ff may be read in the trial of this cause.

Memphis, Tenn., April 29, '59.

O. DAVIS,
Att'y for Def't.

I, G. P. Fonte, the commissioner in said commission named, hereby certify that the evidence of the witness, Richard M. Kirby, was taken under oath as hereinbefore set forth, and was reduced to writing by said witness himself, and subscribed by him in my presence, on the day and at the place named in the caption.

Witness my hand and seal this 29th of April, A. D. 1859.

G. P. FONTE, [SEAL.]
Com'r, &c.

Deposition, &c., of D. H. Jones.

Commission.

THE STATE OF MISSISSIPPI,
Tippah County.

To Walter H. Peters, Commissioner, &c., greeting:

Know ye that we, confiding in your prudence and fidelity, do authorize you, by these presents, diligently to examine, upon certain interrogatories hereunto annexed, D. H. Jones, a witness on the part of the defendants in a suit now pending in our circuit court of Tippah county, between W. L. Lanier, curator of J. J. McMahon, dec'd, plaintiff, and Josiah Locke, Thomas J. Davidson and James B. Ellis, defendants; and therefore, we direct that you do cause the said witness to appear before you, at a time and place by you to be appointed, and him diligently examine upon the said interrogatories; and such examination, sworn or affirmed to by the said witness, you certify according to the laws, customs and usages of your own State; and the deposition of the said witness so certified, together with the said interrogatories and this writ, and every other voucher or exhibit relative thereto in your possession, you seal up and direct to our said circuit court, or to the clerk of our said circuit court of Tippah county, and transmit the same in the most safe and convenient manner.

Witness the Hon. P. T. Scruggs, judge of the 7th judicial district of the State of Mississippi, the 1st Monday in March, 1858, and the 82d year of American independence, and seal of said court. Issued the 10th day of July, 1858.

R. J. THURMAN, *Clerk.*

In the Circuit Court of Tippah county, Mississippi.

W. L. Lanier, Curator of J. J.
McMahon, dec'd,
vs.
Josiah Locke, Thomas J. Davidson, and James B. Ellis.

Interrogatories to be propounded to D. H. Jones, on behalf of defendants:

1st. Are you acquainted with the parties, or any of them, to this suit; if so, which?

2d. Where do you now reside, and what is you present occupation?

3d. Where did you reside, and what was your occupation, during the years 1856 and 1857?

4th. Look upon the bill of exchange shown to you, at the time of taking your deposition, signed by Thos. J. Davidson, J. Locke, and Jos. R. Ferguson, as drawers, payable to the order of J. B. Ellis, drawn on J. J. McMahon, and state *where* or not you ever saw the same before; and if so, when and where, and in whose hands; and if you saw it more than once, in whose hands you saw it at different times.

5th. State, if you know, in whose handwriting the filling up of said bill is—that is,all those portions of it written with a pen, and not engraved.

6th. If you state that you yourself filled up the written portions of said bill, state upon whose instruction and authority the same was done; and if not done by J. J. McMahon, dec'd, was it or not done for him, or on his behalf, and for his benefit?

7th. State whether or not other bills bearing the same signatures and endorsements as the one shown to you, were filled up at the same time?

8th. Did or did not any of said bills have anything upon them except the engraved portions and the written signatures, when you first saw them? If you cannot answer as to all, answer definitely as to the one shown to you.

9th. State if you know how J. J. McMahon first came into possession of said bills of exchange, while they were blank; did he or not receive them from any party whose name appears on them; if so, which party; were they delivered to him personally, or were they received in a letter? State all you know or have learned from said J. J. McMahon on this subject, as to how and from he first received them.

10th. If not already stated by you, state now, if you know, whether or not said bills of exchange were or not filled up to cover and discharge an account held by said J. J. McMahon against R. M. Kirby, either in his individual capacity or as president of the Cincinnati and Little Rock Slate Company, or both, for bills accepted and paid by said J. J. McMahon, or for money advanced to said Kirby, or both; and if not for this, for what purpose were said bills filled up?

11th. Have you or not, now, the custody and charge of the books and papers, or a portion of them, of said J. J. McMahon, dec'd; if so, do said books or not contain the amount of said J. J. McMahon against said R. M. Kirby, for the year 1856? If so, annex a copy of said account, as it stood at said McMahon's death, or as it now stands, giving the whole account, including all debts and credits, with the dates of each. This inquiry extends to both the individual account against said R. M. Kirby, and to the account against him as president of the Cincinnati and Little Rock Slate Company, or in any other capacity in which said Kirby may have an account on said books.

12th. If you have answered that you have in your custody or keeping any of the papers of said J. J. McMahon, dec'd, are the original bills of said R. M. Kirby, either individually, or as president, as before stated, referred to in the account, referred to in the last interrogatory or not? if so, file said original bills or copies of them with your deposition.

13th. At what time were said bills of exchange, including the one shown to you, filled up? was it or not in March, 1857; or if not then, when was it, as near as you can ascertain or remember?

14th. Had you at any time, or have you now, access to the letter book of said J. J. McMahon, containing copies of business letters sent by him; if so, did he not, in January or February, 1857, address a letter to defendants or to some of them, notifying them that he would in a certain contingency fill up the blank bills of exchange then in his possession? If any such letter was written, annex a copy of it, if you can, to your deposition; and please examine the files of letters addressed to said McMahon, and find the answer of defendants, or any of them, to said letter, and annex the same or a copy of it to your answer; and if you cannot identify it as the answer to the letter spoken of, annex any letter or copies of letters addressed by any of defendants to said McMahon, dated in January or February, 1857.

15th. Referring to the bill of exchange shown to you, look particularly at the words "with eight per cent. interest, from maturity, until paid," and state if you know in whose handwriting the same is written, and by whose instructions and authority the same inserted in said bill. Were either of the defendants, or not, present, consenting to or affirming the same?

16th. If in answer to the 9th interrogatory to you have stated that the blank bills of exchange referred were received by said

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J. J. McMahon, in a letter, please annex said letter, or a copy of it, to your deposition.

17th. Who else, besides yourself, were book-keepers, clerks, or agents of said J. J. McMahon, in the year of 1856, and 3 first months of 1857, and where do they now reside?

J. L. ALCORN, WATSON & CRAFT,
J. W. THOMPSON & O. DAVIS,
Att'ys for Def'ts.

To W. L. Lanier, curator of J. J. McMahon, dec'd, or to James A. Green, his attorney of record: Take notice that in ten days after service of this notice on you we shall apply to the clerk of the circuit court of Tippah county, Miss., for a commision to take the deposition of D. H. Jones, a witness residing in the State of Louisiana, which, when taken, we shall offer in evidence in the case now pending in said circuit court, wherein you are pl'ff, and we are defendants, and also in a suit pending in the U. S. district court at Pontotoc, Miss., wherein you are pl'ff, and said Locke and Davidson are defendants. The bill sued on in this case, or one of those sued on in said suit in Pontotoc, which are precisely similar, except as to amounts, will be shown to said witness in taking his deposition.

O. DAVIS,
Att'y for Def'ts.

Service of the within acknowledged and filing waived. July 1st, 1858.

J. A. GREEN.

THE STATE OF MISSISSIPPI,
Tippah County.

I, R. J. Thurmond, clerk of the circuit court of said county, do hereby certify, that the foregoing is a true and correct copy of the original on file in my office.

Given under my hand and the seal of said court at office, the 10th day of July, A. D. 1858.

R. J. THURMOND, *Clerk.*

Copy of original bill of exchange above named annexed, with notice of protest thereon to the above commission and interrogatories.

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest, be it known, that on this eighteenth day of March, in the year one thousand eight hundred and fifty-seven, at the request of F. D. Bell, holder of the original draft, whereof a true copy is on the reverse hereof written, I, Daniel Israel Ricardo, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said draft to Mr. J. J. McMahon, the drawee, at his office, in this city, and demanded payment thereof; was answered that the same could not be paid, for want of funds of the drawer. Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges and interest, suffered, or to be suffered, for want of payment of the said draft. Thus done and protested in the presence of Ernest Petitpan and Paul Waterman, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

D. J. RICARDO,
Notary Public.

Bill of exchange is in the words and figures following, to wit:

Exch'ge for MEMPHIS, TENN.,
\$1,000$^{\underline{00}}$. *July* 15*th*, 1856.

Eight months after date of this our first of exchange (second unpaid), pay to the order of J. B. Ellis, one thousand dollars $\frac{}{100}$, value received, and charge the same to account, with eight per cent. interest from maturity until paid.

THOS. J. DAVIDSON,
JOS. R. FERGUSON,
J. LOCKE.

To JNO. J. MCMAHON,
New Orleans, La.

Endorsed: J. B. Ellis, Ripley, Miss.; Rich'd M. Kirby.

I, the undersigned, notary, do hereby certify that the parties to the draft, whereof a true copy is above written, have been duly notified of the protest thereof by letters to them, by me written and addressed, dated on the day of the said protest, and served on them respectively in the manner following, to wit:

Notices to Jos. R. Ferguson, Thos. J. Davidson, drawers, and J. B. Ellis, Rich'd M. Kirby, endorsers, directed to them at Memphis, Tenn.; and notice to J. Locke, drawer, addressed to him at Friar's Point, Miss., at the request of the holders, and the same were deposited by me, notary, in the post-office of this city, on the day and date hereof (postage paid).

In faith whereof, I have hereunto signed my name, together with Ernest Petitpan and Paul Waterman, witnesses, at New Orleans, this eighteenth day of March, eighteen hundred and fifty-seven.

(Signed) D. J. RICARDO, *N. P.*

(Signed) ERNEST PETITPAN.
" PAUL WATERMAN.

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I certify the foregoing to be a true copy of the original draft, protest, and services of notices of protest, in my current Register of Protests.

D. J. RICARDO, *N. P.*

New Orleans, 18th March, 1857.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans, ss.

Be it remembered, that on this 28th day of the month of July, A. D. 1858, by virtue of, and in pursuance to, a commission to me directed, by the honorable the circuit court of Tippah county, in the State of Mississippi, to take the deposition of David H. Jones, of the city of New Orleans, State of Louisiana aforesaid, a witness for and on the part of the defendants, in a certain cause therein pending, wherein W. L. Lanier, curator of J. J. McMahon, is plaintiff, and Josiah Locke, Thomas J. Davidson, and James B. Ellis, are defendants, on the interrogatories annexed and accompanying said commission, I caused the said David H. Jones, a person of apparently sound mind and lawful age, to come before me at my office, No. 50 Camp street, in the said city of New Orleans, in the State aforesaid, who being by me first duly cautioned, sworn, and examined, the truth, the whole truth, and nothing but the truth, to testify in answer to said interrogatory, did depose and say:

To the 1st interrogatory. I am acquainted with W. L. Lanier, and knew J. J. McMahon for several years prior to his demise.

To the 2d interrogatory. I reside in New Orleans, and am an accountant and book-keeper.

To the 3d interrogatory. I resided in New Orleans, and at the period was an accountant, clerk, and book-keeper for J. J. McMahon.

To the 4th interrogatory. I have seen the bill before; I saw it first in March, (the 18th,) 1857, in the office of said J. J. McMahon; I saw it in the hands of Mr. McMahon; afterwards it was in my hands; I have seen it many times since; the last time I saw it, was when I enclosed it to Messrs. Munford & Estis, at Memphis, Tenn., on or about the 24th of September, 1857. The various times I have seen it were, when it was in possession of Mr. McMahon, and subsequently of Mr. Lanier, his curator.

To the 5th interrogatory. The said bill, with the exception of the figures "$1,000," on the upper left hand margin, and the signatures and endorsements, and the engraved portion of it, is in my handwriting, and was filled up by me, and is in my usual handwriting.

To the 6th interrogatory. I filled up the said bill as said above, by and in conformity with Mr. McMahon's instructions, and his authority.

To the 7th interrogatory. I filled up at the same time three other bills of exchange, bearing the same signatures and endorsements, to wit: Two for $1,000 each, and the other for $8,992 44. The two of $1,000 each had the figures $1,000 on the upper left hand margin, and were signed and endorsed. The other one, for $8,992 44, was filled up by me, and had only signatures and endorsements on it.

To the 8th interrogatory. I refer to my answers to the 6th and 7th interrogatories.

To the 9th interrogatory. I was informed by Mr. McMahon, on the 18th of March, 1857, that he had received the above and before mentioned drafts or bills of exchange from the assignee or assignees of the Cincinnati and Little Rock Slate Company; that they were given him for the purpose of securing him, and paying him a debt due him by said company. That the parties signing said bills were either the assignees or the largest stockholders, and were solvent persons. That the reason the bills were forwarded, and drawn in blank, was because the exact amount due and owing him by the said company was not accurately ascertained and known at the time the bills were drawn and received; and I do not know how McMahon received these bills, whether by letter or otherwise.

To the 10th interrogatory. The bills were filled up to cover the indebtedness of the "Cincinnati and Little Rock Slate Company," represented by R. M. Kirby, president, to J. J. McMahon. The account of said company was kept on the books of said McMahon, under the style of "R. M. Kirby, president Cincinnati and Little Rock Slate Company," and embraced no individual transactions of said Kirby for the years 1856 and 1857; a copy of said account I attach hereto, marked "Exhibit A," and make it part of my answer to this interrogatory.

To the 11th interrogatory. In my capacity of book-keeper for W. L. Lanier, curator of the estate of said McMahon, I have access and charge of the books of the latter, and to his papers, &c. The only account against R. M. Kirby, individually, on the books of said McMahon, is that copy of which I annex, as Exhibit B, and make part of my answer hereto. I refer to the "Exhibit A" annexed in answer to interrogatory 10th, and refer to same in part answer to the present interrogatory.

To the 12th interrogatory. The bills referred to are not in my charge; I think they were sent by McMahon, or left by him to, or at Memphis, Tenn., with Munford & Estis. I do not recollect whether Kirby signed them as president, or individually.

To the 13th interrogatory. The four bills of exchange were all filled up by me, as said, on the 18th of March, 1857.

To the 14th interrogatory. I have access to the letter books of said McMahon, and in answer and compliance with this interrogatory, annex the exhibits respectively marked C, D, E, F, G, and H, all of which are copies, except G and H, the latter of which was received since the death of Mr. McMahon. These two letters, G and H, are all that I can find that were written by defendants.

To the 15th interrogatory. The words "eight per cent. interest from maturity until paid," were filled in by me, by directions of Mr. McMahon; none of the defendants were present.

To the 16th interrogatory. I refer to my answer to said 9th interrogatory.

To the 17th interrogatory. George W. Points, Joseph H. Lyons, jr., and myself, were in the employ of Mr. McMahon during the year 1856, and continued in his employ up to the 5 of June, 1857, the time of his demise.

DAVID H. JONES.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans, ss.

I, the undersigned, Walter Hicks Peters, commissioner, resident in this city, duly commissioned and qualified, by the executive authority and under the laws of the State of Mississippi, to take the acknowledgment of deeds, depositions, &c., &c., to be used in said State, or the courts thereof, do hereby certify that the foregoing deposition of David H. Jones was taken before me at the time and place, and for the purposes mentioned in the caption hereof; that the said witness was duly sworn by me before he gave his testimony, that the evidence he should give should be the truth, the whole truth, and nothing but the truth, and thereupon testified as shown in the foregoing deposition by him subscribed. The statements of the witness being reduced to writing by me in his presence, and read over to him and by him subscribed in my presence, and no one except the said witness and myself being present at said examination—neither plaintiffs nor defendants in person, or by agent or attorney; that I am not of counsel, kin, or attorney to either of the parties to this suit, nor interested in the event thereof; that said deposition has in no manner been altered or changed since the same was subscribed by the witness, but has remained in my hands up to the time of sealing and directing the same to the court, whence the said commission issued, and delivering the whole at the post office in this city for transmission by mail.

Given under my hand and seal at the city of New Orleans, on the twenty-eight day of the month of July, in the year one thousand eight hundred and fifty-eight, (1858.)

WALTER H. PETERS,
Commissioner for Mississippi.

Exhibits attached to Deposition of David H. Jones.

EXHIBIT A.

Copy 1st acc't ren'd.

R. M. Kirby, Pres't, in acc't with J. J. McMahon.

					Days.	Interest.
1856.						
Jan'y	31.	To	accept'e d'ft favor L. D. Stickney, pay'e 15–18 M'ch...	$1,000 00	107	$23 78
“	“	“	do. do. 18–21 “ ...	1,000 00	104	23 11
“	“	“	do. do. 15–18 April..	1,000 00	76	16 89
“	“	“	do. do. 18–21 “ ..	1,000 00	73	16 22
“	29.	“	cash p'd H. M. True, dft. *a* sgt., Feb'y 8th...............	250 00	146	8 11
Feb'y	8.	“	L. D. Stickney, dft. *a* sgt., on act. 96 B. C., p'd 15 Feb'y.	1,000 00	139	30 88
“	23.	“	do. pay J. R. Ferguson, due 24–27 M'ch.	2,500 00	98	54 44
M'ch	3.	“	accept'e d'ft favor L. D. Stickney, due 17–20 April.....	1,000 00	74	16 44
“	“	“	do. do. 17–20 “	1,000 00	74	16 44
“	5.	“	do. do. 4–7 May	1,000 00	57	12 67
“	7.	“	do. do. 21–24 April.....	1,000 00	70	15 56
“	29.	“	do. do. 28–31 May	1,000 00	33	7 33
April	7.	“	do. do. 22–25 May	5,000 00	39	43 33
“	16.	“	do. do. 16–19 May	1,000 00	45	10 00
“	23.	“	do. do. 23–26 “	1,500 00	38	12 67
	1.	“	do. do. 30–3 July	3,000 00		
Feb'y	18.	“	cash p'd you..	50 00	136	1 51
April	5.	“	“ redeemed from G. C. Blount...........................	100 00	89	1 98
May	26.	“	“ p'd for dispatch..	1 60		
June	2.	“	“ do.	1 50		

					Days.	Interest.
May	26.	To cash refunded protested, P. O. d'ft.		$1,314 63	38	$11 10
"	1.	" commissions for accepting $22,000, *a* 2½ p. c.		550 00		
July	1.	" do. for advancing $24,417 73, *a* 2½ p. c.		610 44		
"	3.	" balance interest ac. to date pr. margin		74 40		
						$322 46
				$25,952 57		

Credits.

					Days.	Interest.
Feb'y	5.	By cash check	$300 00		149	$9 53
April	3.	" "	600 00		138	18 40
"	4.	" "	1,000 00		137	30 44
May	10.	" P. O. d'ft.	1,299 72		54	15 60
M'ch	25.	" proceeds 96 b. cotton	4,033 60		100	89 64
"	"	" do. 30 do.	1,162 66		100	25 83
May	23.	" do. 12 do.	580 51		41	5 28
"	"	" do. 57 do.	2,713 73		42	25 34
"	"	" do. 63 do.	2,957 45		42	27 60
				14,647 67		248 06
E. & O. E.		Due J. J. McM.		$11,304 90		
		Bal. to debit				74 40
						$322 46

July 3d, 1856.

Copy of 2d Ac't.

R. M. Kirby, Pres't, in ac't with J. J. McMahon.

1856.				
July	3.	To balance pr. ac't ren'd.		$11,304 90
		CREDITS.		
"	15.	By J. R. Ferguson, J. Locke, and Thos. J. Davidson, d'ft on me, pay'e 15–18 M'ch, '57	$1,000 00	
		" do. do. do.	1,000 00	
		" do. do. do.	1,000 00	
		" do. do. do.	8,992 44	
			11,992 44	
		Less 258 days' int. ac., *a* 8 p. c., (off.)	687 54	
				11,304 90

(Note.) To be charged in addition, omitted in former ac., fr't paid on $10,000 bank notes in p'k'ge, $25.

EXHIBIT B.

R. M. Kirby, Esq., in ac't with J. J. McMahon.

1855.			
Jan'y	19.	To cash bal'e due this day	$806 38
Dec.	28.	" H. Thorn's d'ft, due 7th Ap'l, '55	412 39
		" commission for accepting, 2½ p. c.	10 31
		" do. advancing "	10 31
		" interest to August 15, '55	49 43
			1,288 82

119

CREDITS.

April	3.	By am't p'd E. S. McMahon	$150 00	
		Interest to August 15	4 40	
				154 40
				1,134 42
		Interest to 15th Feb'y, 1856		39 44
				1,173 86
Aug'st	15.	By draft favor H. Thorn, payable 15 Feb'y, '56		$1,173 86

R. M. Kirby, Esq., in ac't with J. J. McMahon.

1855.			
Aug'st	15.	To d'ft favor H. Thorn, payable 15th Feb'y, 1856	$1,173 86
		" " dated Nov. 10th, 1854, *a* 4 mos. date, and due 10th M'ch, 1855	550 00
		" " dated 25 July, 1855, for D. J. Conner, due 25-28 Jan'y, 1856	530 00
1856.			
Jan'y	31.	" cash p'd dispatch	2 20
Feb'y	19.	" invoice	4 20
May	2.	" cash p'd for repairing watch	3 00
"	26.	" " dispatch	1 50
"	"	" " do.	1 60
		Bal. due J. J. McMahon	$2,266 36

Exhibit C, (*Copy.*)

New Orleans, *Feb'y* 4, '57.

Messrs. Davidson & Ellis:

Gent: Your favor 17 Jan'y only came to hand by this morning's mail. When we had the interview at Memphis, you admitted that the drafts sent me were only to be used for $6,000. I can prove by Mr. Kirby that they were sent to me to raise the money upon to place me in funds. I will let the paper go to protest, and we will then have to law it. I will sue upon the notes issued, as well as the drafts, and prove that you were stockholders.

Very respectfully,

(Signed) J. J. McMAHON.

Exhibit D, (*Copy.*)

New Orleans, *Feb'y 9th,* '57.

Col. J. Locke:

D. Sir: After waiting till my patience has become exhausted, I have concluded to send up one of my young men, Jos. H. Lyon, to collect the am't of the A. C. Blair draft, also all you intend paying on the debt against Davidson & Ellis, Kirby and yourself, for which funds were placed in your hands last June. I want every dollar you can raise, either in money, cotton, or good drafts. I must have these matters closed. I want the money badly, and if not arranged now, I must put the claim in suit. I think it best to speak candid, and if you cannot arrange the amount you have in your hands at home, and can do so by coming to the city, come down with Mr. Lyon. From what Kirby says, you must have some $5,000 or $6,000, beside the Blair draft.

Very respectfully,

(Signed) J. J. McMAHON.

Exhibit E, (*Copy.*)

New Orleans, *May* 4, '57.

Doct. J. B. Ellis:

D. Sir: Your favor 27th April is just to hand. Locke was here some time ago; denied that any claims had been put in his hands to apply to the debt due me; promised to call and arrange the amount due by Col. A. C. Blair; failed to do so; left the city without my seeing him again. Nothing has been paid on my ac. against R. M. Kirby, as pres't; some $11,000 due on that score; sent part, say $8,000, to sue upon.

Very respectfully,

(Signed) J. J. McMAHON.

Exhibit F, (*Copy.*)

New Orleans, *May* 20, '57.

Doct. J. B. Ellis:

D. Sir: I have written to Locke, through a friend, if he would pay $3,000, with 8 p. c. int'st, from 18 March, that I would release him from the debt, so far as I am concerned. I make the same proposition to you and Mr. Davidson: each of you pay or secure me in the payment of $3,000 ea., 8 p. c. in'st, and I will release you from the balance of the debt. If you accept the proposition, address Messrs. Munford & Estes, of Memphis, who have the claim for collection.

Very respectfully,

(Signed) J. J. McMAHON.

Exhibit G.

Ripley, Miss., *April* 21, 1857.

Col. J. J. McMahon:

Dear Sir: Has Locke fixed up the matter he promised? Have you heard from him? What is he intending to do, and how does the matter stand? I called at your office once, on Camp street, and intended to call again and see you, but the last half day I had I expected to be at leisure, but was very busy. I calculate to be down again this spring or summer, and will call.

Very truly,

J. B. ELLIS.

Marked on the back J. B. Ellis, Ap'l 27th, '57.

Exhibit H.

Friar's Point, *June* 5, '57.

J. J. McMahon, Esq., *New Orleans:*

Dr. Sir: Your favor of the 20th ulto. to my friend, C. Bobo, is before me, and I am really surprised. Will you do me the favor to advise me of how many d'fts in your possession that my name is on, and what the am't of each one is? Please let me hear from you, for I am not an unreasonable man.

Very truly,

J. LOCKE.

Marked on back, J. Locke, June 5th, 1857.

The direct and cross-interrogatories of L. D. Stickney and William H. Slover are in the words and figures following, to wit:

The State of Mississippi, Tippah County, to Hume F. Hill, Commissioner, greeting:

Know ye, that we, confiding in your prudence and fidelity, do authorize you by these presents diligently to examine upon certain interrogatories hereto annexed, L. D. Stickney and William H. Slover, witnesses on the part of the defendants, in a suit now pending in our circuit court of Tippah county, between W. L. curator of J. J. McMahon, dec'd, plaintiff, and Thomas J. Davidson, James B. Ellis, Josiah Locke are defendants; and therefore we direct that you do cause the said witnesses to appear before you at a time and place by you to be appointed, and them diligently examine upon the said interrogatories; and such examination, sworn or affirmed to by the said witnesses, you certify according to the laws, customs, and usages of your own State; and the depositions of the said witnesses so certified, together with the said interrogatories and this writ, and every other voucher or exhibit relative thereto, in your possession, you seal up and direct to our circuit court, or to the clerk of our said circuit court of Tippah county, and transmit the same in the most safe and convenient manner.

Witness the Hon. P. T. Scruggs, judge of the 7th judicial district of the State of Mississippi, the 1st Monday in March, 1858, and the 82d year of American independence, and seal of said court.

Isssued the 28th day of June, 1858.

R. J. THURMOND, *Clerk.*

In the Circuit Court of Tippah county, Mississippi.

W. L. LANIER, Curator of J. J. McMahon, dec'd,
vs.
THOMAS J. DAVIDSON, JAMES B. ELLIS, JOSIAH LOCKE.

Interrogatories to be propounded to L. D. Stickney, a witness on behalf of defendants, who resides in the State of Tennessee:

Intg. 1st, by def'ts. Are you acquainted with the parties to this suit?

Intg. 2d, by same. Do you or not know of defendants having at any time been engaged in erecting, establishing, or putting in operation a banking institution or office of discount or deposit; if yea, in what State and when, and what was the name of such banking institution or office of discount or deposit? Did it have a president and cashier; if so, what were their names?

Intg. 3d, by same. State whether or not said J. J. McMahon ever had anything to do with said slate company, or any connection or business transaction with it; if so, state fully and in detail all you know about it.

Intg. 4th, by same. Look upon the bill of exchange accompanying these interrogatories, and of which the following is a copy, viz:

Exch'ge for $8,992 44. Memphis, Tenn.,
15th, July, 1856.

Eight months after date of this our first of exchange (second unpaid) pay to the order of J. B. Ellis, eight thousand nine hundred and ninety-two $\frac{44}{100}$ dollars $\frac{\ }{100}$, value received, and charge the same to account of, with eight per cent. interest from maturity until paid,

JAS. R. FERGUSON,
J. LOCKE,
THOS. J. DAVIDSON.

To Jno. J. McMahon, *New Orleans, La.*

Endorsed: J. B. Ellis, Ripley, Miss. Rich'd M. Kirby:

and state if you know anything of the origin and history of said bill of exchange; and if so, all you know in relation thereto.

Intg. 5, by same. Did you or not ever hear any conversation between the said John J. McMahon and any of these defendants in relation to said bill of exchange? if so, state when and where, and all that was said between them, in relation thereto, as near as you can now remember.

Intg. 6th, by same. Did you or not ever see any letter from said John J. McMahon to any of the defendants, in relation to said bills of exchange? if so, state the date, and substance of the same; give the words, if you can do so.

Intg. 7th, by same. If you have not already done so, state if you know whether or not said J. J. McMahon, when he advanced money to or accepted bills for the benefit of said slate company, had any knowledge or understanding of the use intended to be made of the money advanced by him, on the purposes to which the same and proceeds of bills accepted by him were to be applied, and all you may know on that point?

Intg. 8, by same. State if you know whether the said Cincinnati and Little Rock Slate Company ever had any charter granted by the United States, or by the State of Tennessee?

Intg. 9th, by same. At the time said bills of exchange were signed in blank, was there any stipulations in them or any of them as to the rate of interest they were to bear after maturity? state all you know on that point.

Intg. 10th, by same. State anything else you may know important to either party in this suit.

WATSON & CRAFT,
J. L. ALCORN,
J. W. THOMPSON, and
O. DAVIS,
Att'ys for Def'ts.

Interrogatories in the same case to W. H. Slover, a witness for defendants, who also resides in the State of Tennessee.

To W. H. Slover, by def'ts:

The ten interrogatories prepared by defendants to L. D. Stickney, and hereby also propounded to you: answer them fully and in detail, as far as you may know anything about the matters referred to in them.

Intg. 11th, by same. Do you or not know of def'ts, or any of them, having, at any time, written any letter to said J. J. McMahon, upon the subject of said blank bills of exchange? if so, state all you know about it.

O. DAVIS, and others,
Att'y for Def't.

To W. L. Lanier, curator of J. J. McMahon, or to J. A. Green, his attorney of record:

Take notice that in ten days after filing the annexed interrogatories in the clerk's office, and service of the same, or either of them, we shall apply to the circuit clerk of Tippah county, Missi., for a commission to take the depositions of L. D. Stickney and W. H. Slover on the foregoing interrogatories, which, when taken, we shall offer in evidence in a suit now pending in said circuit, wherein said Lanier, as curator of J. J. McMahon, dec'd, is pl'ff, and we are defendants. You can file copies interrogatories if you think proper.

T. J. DAVIDSON, J. B. ELLIS, and
J. LOCKE,
By O. DAVIS, *Att'ys.*

Service of the within ackowledged June 15, 1858.
J. A. GREEN.

Filed the 15th day of June, 1858.
R. J. THURMOND, *Clerk.*

Cross-interrogatories by Plaintiff.

Cross-intg. 1st. Are you interested in the result of this suit, either directly or indirectly?

2. If, in answer to defendants' 2 interrogatory, you say that you do know of defendants having been engaged in erecting, establishing, or putting in operation, any banking institution, &c., state the means of your information, and whether or not you were ever in anywise connected with said banking institution, and in what way you were connected, if at all.

3. If McMahon had any connection with the slate company,

state fully and precisely what that connection was, if any, out of any agreement; state with whom the agreement was made.

4th. State if you know for what purposes the money that was obtained upon the bill of exchange, of which there is a copy in defendants' direct interrogatories, was and by whom, where, when, and particularly if you know whether it was used by the company for its own benefit, or by the defendants for their individual benefit.

5th. If you ever heard any conversation between McMahon and any of the defendants, state which one of them it was with, and whether previous to or after the date of the bill of exchange.

6th. If there was any stipulation between defendants, or any of them, and plaintiff, as to the rate of interest to be paid by defendants, state with what one of the defendants the stipulation was made, and the means of your knowledge, together with all *any* everything you may know in reference to it.

FEATHERSTON & HARRIS, and GREEN,
For Plaintiff.

Filed 19th June, 1858.

R. J. THURMOND, *Cl'k.*

THE STATE OF MISSISSIPPI,
Tippah County.

I, R. J. Thurmond, clerk of the circuit court of said county, do hereby certify that the foregoing is a true and correct copy of the original and cross-interrogatories on file in my office.

Given under my hand and seal of said court, at office, the 28th day of June, A. D. 1858.

R. J. THURMOND, *Cl'k.*

Cross-int'gs to L. D. Stickney.

1st. If you shall state, in answer to defendants' third interrogatory, that J. J. McMahon had anything do with the slate company, or any connection or business transaction with it, state how you know the fact, and whether it is of your personal knowledge or not.

2d. If you shall state, in answer to defendants' 4 interrogatory, that you were present when the bill of exchange mentioned in the interrogatory was signed, state whether John J. McMahon was present at that time, or had anything to do with the drawing or signing of the same.

W. L. LANIER, Curator of J. J. McMahon, dec'd,
vs.
T. J. DAVIDSON and J. LOCKE.

In the U. S. Dist. Court at Pontotoc.

In this case it is agreed that the depositions taken by def't in this case in a suit by same pl'ff against same def'ts and J. B. Ellis, in a circuit court at Ripley, Missi., may be read in evidence in this suit, and that def'ts may also retake the deposition of L. D. Stickney on his 3d and 4th interrogatories in the said deposition, and on the above cross-interrogatories, all of which to be read in this suit; the retaking of said Stickney's deposition on said interrogatories to be before Hume F. Hill, as commissioner, without commission; all of which to be subject to objections for incompetency or irrelevancy.

HUGH R. MILLER,
Att'y for Lanier, Adm'r.
O. DAVIS,
Att'y for Def't.

Oct. 30, 1858.

The deposition of L. D. Stickney filed in the office of the clerk of the district court of the United States for the northern district of Mississippi, on the 20th day of May, 1859, is in the words and figures following, to wit:

The deposition of L. D. Stickney and W. H. Slover, of Memphis, and State of Tennessee, witnesses of lawful age, produced, sworn, and examined upon their corporal oaths, on the eighth day of July, in the year of our Lord 1858, at my office in the city of Memphis, in the county of Shelby and State aforesaid, by me, Hume F. Hill, a commissioner duly appointed by a dedimus protestatum, or commission, issued out of the clerk's office of the circuit court of Tippah county, in the State of Mississippi, bearing teste in the name of R. J. Thurmond, esq., clerk of said circuit court, with the seal of said court affixed thereto, and to me directed, as such commissioner, for the examination of L. D. Stickney and W. H. Slover, witnesses in a certain suit and matter in controversy, now pending and undetermined in the said circuit court, wherein W. L. Lanier, curator of J. J. McMahon, dec'd, plaintiff, and Thomas J. Davidson, James B. Ellis, and Josiah Locke, defendant, in behalf of the said defendants, as well upon the cross-interrogatories of the plaintiff as on the interrogatories of the defendants, which were attached to or enclosed with the said commission, and upon none other. The said L. D. Stickney, being first duly sworn by me as a witness in the said cause, previous to the commencement of this examination, to testify the truth, as well on the part of the plaintiff as the defendant, in relation to the matters in controversy between the said plaintiff and defendant, so far as he should be interrogated, testified and deposed as follows:

Sales of 63 *bales cotton, rec'd p'r "Belfast" by J. J. McMahon, p'r acc. of L. D. Stickney, Esq'r.*

U X lbs.	486	521	514	518	459	475	484
	518	530	512	416	487	497	485

U X lbs.	514	517	448	472	447	521	483
	506	416	513	416	477	505	
	504	499	486	496	423	440	1,4521
	484	483	483	483	485	491	4,801
	516	490	509	497	470	449	4,682
	502	480	514	490	471	478	4,775
	489	499	480	500	471	492	4,947
	480	408	488	487	492	455	4,843
							5,009
	5,009	4,843	4,947	4,775	4,682	4,801	
							30,509

Say 63 bales, weighing 30,509 lbs., *a* 10½................ $3,203 44

Charges.

Freight, *a* $1 25...	$78 75	
River insurance on $50 per bale, *a* ¾.............	23 63	
Fire insurance on $3,204 44, 1 p. ct............	32 03	
Drayage, storage, labor, and weighing, 50......	31 50	
Commissions on $3,203 44, *a* 2½ p. ct...........	80 08	
		245 99
Net proceeds...		2,957 45

E. E.

J. J. McMAHON,
By G. W. POINTS.

New Orleans, May 22d, 1856.

Sales 57 *bales of cotton, rec'd p'r H. R. W. Hill, by J. J. McMahon, p'r acc. of L. D. Stickney, esq'r.*

A X lbs.	497	490	508	664	484	415	
	453	483	507	549	475	484	
	425	474	502	610	402	470	
	408	496	430	430	528	520	
	460	490	501	517	447	475	
	443	473	469	436	420	439	
	477	423	500	439	430	405	4,656
	390		515	497	449	478	4,681
	422	3,329	520	435	545	459	5,096
	487	4,462	470	509	501	511	4,922
	4,462		4,492	5,096	4,681	4,656	
		7,791					19,355

Say 17 bales, weighing 7,791 lbs., *a* 11c...	857 01	
" 40 " " 19,355 lbs., *a* 10¾c.	2,080 66	
		$2,937 67

Charges.

Freight, *a* $1 25..................................	$71 25	
River insurance on $50 per bale, *a* ¾ p. ct.	21 38	
Fire insurance on $2,937 67/100, *a* 1 p. ct....	29 37	
Drayage, storage, labor, and weighing, 50	28 50	
Commissions on $2,937 67, *a* 2½ p. ct.......	73 44	
		223 94
Net proceeds..		$2,713 73

E. E.

J. J. McMAHON,
By G. W. POINTS.

New Orleans, May 22d, 1856.

Sales of 12 *bales cotton rec'd per Belfast, and sold by J. J. McMahon for acc. of L. D. Stickney, Esq'r.*

K Y	512			
	521			
	506			
	479			
	515			
	503			
	510	461		
	515	483		
	459	944		
	486	5,006		
	5,006	5,950	lbs. *a* 10½ c..........................	$624 75

Ch'g's.

Freight *a* $1 25 *a*..	15 00	
River ins'ce on $50 *a* ¾ p. c..............................	4 50	
Fire do. on $624 *a* ½ p. c..............................	3 12	
Drayage, storage, labor, and weighing, 50 c.........	6 00	
Commissions on $624 75 *a* 2½ p. c.....................	15 62	
		44 24
Net proceeds..................................		$580 51

E. E.

J. J. McMAHON,
Pr. D. H. JONES.

New Orleans, May 23d, 1856.

New Orleans, *Mar.* 26, '56.

L. D. Stickney, Esq.,

D. Sir: Enclosed you will find ac. sales 96 bales cotton, net proceeds to cr. your office \$4,033 $\frac{60}{100}$; also sales 30 bales, net proceeds \$1,162 $\frac{66}{100}$, which I hope will be found correct and satisfactory. I was compelled, as Mr. Kirby knows, to hold on to these shipments in order to save you from loss as much as possible. Look at your bill book and see that I am placed in funds to meet my acceptances which are now running to maturity.

Very respectfully,
J. J. McMAHON.

W. L. Lanier, Curator of J. J. McMahon, dec'd,
vs.
Thomas J. Davidson, James Ellis and Josiah Locke.

Answer of L. D. Stickney to interrogatories propounded by defendants in this case.

Answer 1st. I know the defendants, but do not know Lanier; was acquainted with McMahon in his lifetime.

Answer 2d. The defendants were engaged in establishing, in putting in operation a banking institution in Memphis, State of Tennessee, by the name of the Cincinnati and Little Rock Slate Company. R. M. Kirby was president; no cashier was provided by the charter.

Answer 3d. J. J. McMahon had the charter submitted to him by R. M. Kirby, and agreed to act as treasurer of said Cincinnati and Little Rock Slate Company at New Orleans, State of Louisiana.

In pursuance of that arrangement, the office of treasurer, for redemption of the notes of said slate company in New York was abolished, and the steel-plates on which said notes were printed was altered and new notes struck, which were redeemable at the office of J. J. McMahon in New Orleans. The notes were in the form of drafts, like the notes of the Northern Bank of Mississippi; J. J. McMahon's name engraved on them. McMahon proposed to use these notes on Red river, in the purchase of cotton, where, under the sanction of his name, they would circulate freely. The proceeds of bills drawn at Memphis on McMahon all passed into the hands of H. M. True, who was then acting as financial agent of said slate company. Mr. Kirby directed that the said proceeds should be invested in cotton and shipped to McMahon, to meet the bills as they matured. Being then a stockholder, and acting under the advice of Kirby, I made purchases of cotton, as will appear by the accounts of sales herewith filed: one of twelve bales, one of fifty-seven bales, and one of sixty-three bales; also, a letter of McMahon, showing account sales of ninety-six bales purchased with said proceeds. My agency was merely nominal; the bill of lading was in my name, and the account sales rendered in conformity thereto, but the transaction was in fact that of the slate company. I received no commission or any pecuniary consideration for my trouble. The remainder of the proceeds was stolen by True.

Answer 4th. J. R. Ferguson, J. Locke, and Thos. J. Davidson signed blank bills of exchange in my presence, some time in May, 1856, I think, and J. B. Ellis and R. M. Kirby endorsed it. This was done at the suggestion of Kirby, to relieve McMahon from True's theft. I do not recollect any specific amount being named to insert in the body of the bill, nor was anything said about interest at that time. I was not a stockholder; I had disposed of my stock, and published in one of the Memphis newspapers that I had no interest in or connection with said slate company. There was a large amount of the notes of said circulation which Mr. Kirby redeemed.

Answer 5th. I did not.

Answer 6th. I have no recollection about any.

Answer 7th. He was fully advised about the slate company and its operations before he advanced any money on account of it.

Answer 8th. It had no other charter than that granted by the legislature of the State of Arkansas.

Answer 9th. There was not.

Answer 10th. I recollect nothing further, except R. M. Kirby placed about twelve thousand dollars of the notes of said slate company in the hands of McMahon for circulation. This was done before any bills were paid by McMahon on account of said slate company.

Answer to cross-interrogatories:

Answer 1st. I am not.

Answer 2d. The parties were stockholders in the Cincinnati and Little Rock Slate Company; I was myself a stockholder for several months, but I disposed of my stock before the bill of exchange in controversy in this suit was signed, and at that time had no connection with the company.

Answer 3d. All the connection that McMahon had with the slate company, within my knowledge, is set forth in my third answer to defendants' interrogatories. His agreement was made with R. M. Kirby, as president of the slate company.

Answer 4th. No money was obtained on the bill of exchange herein referred to; it was given to be used by McMahon to cover his previous advances to the slate company.

Answer 5th. I heard some conversation between McMahon and Kirby, but not in reference to the bill of exchange; it was in the summer of 1856; I do not recollect the substance of that conversation.

Answer 6th. I know nothing further than what I have already stated; and further this deponent saith not.

L. D. STICKNEY.

And at the same time and place the said W. H. Slover, being first duly sworn by me as a witness in the said cause, previous to the commencement of his examination, to testify the truth, as well on the part of the plaintiff as the defendant, in relation to the matters in controversy between the said plaintiff and defendant, so far as he should be interrogated, testified and deposed as follows:

W. L. LANIER, Curator of J. J.
McMahon, dec'd,
vs.
THO'S J. DAVIDSON, J. B. ELLIS
and JOSIAH LOCKE.

Answers of W. H. Slover to interrogatories propounded by Defendants.

Answer 1st. I am acquainted with the defendants, but not with the plaintiff.

Answer 2d. The defendant was engaged in putting in operation a banking institution in Memphis, Tennessee, by the name of the Cincinnati and Little Rock Slate Company. R. M. Kirby was president and H. M. True acted as cash'r of the office at Memphis.

Answer 3d. I don't know anything of my own knowledge.

Answer 4. I was present when a number of bills of exchange *was* signed in blank, and I have no doubt, from its appearance, but this is one of the same, and they were placed in the hands of R. M. Kirby for the purpose of aiding him in taking up the circulation of said banking institution; as near as I can recollect, it was about the 1st June, 1856, when those bills of exchange *was* signed. Thomas J. Davidson and J. B. Ellis had withdrawn from the institution, but loaned those that stayed in the use of their names. The bills were all in blank, except the names of parties and the engravings, and in that condition they were left with R. M. Kirby, with the understanding between the parties thereto, that if he, Kirby, needed them, he was to use them for the taking up of the outstanding circulation, and he was authorized to fill the bills up for one thousand dollars each,; my recollection is that there were five or six of the blank bills of exchange in all left with the same R. M. Kirby.

Answer 5. I never heard any conversation between the parties on the subject.

Answer 6. I *seen* a letter from J. J. McMahon directed to Thos. J. Davidson and J. B. Ellis, in which he stated if there was not some arrangement made to settle up the amount due him from the Cincinnati and L. R. Slate Company, that he would fill up the blank bills of exchange and sell them; this was some time in January or February, 1857.

Answer 7. I don't know anything on that subject.

Answer 8. It had a charter granted by the State of Arkansas; if it had any other, I never heard of it.

Answer 9. The bills *was wholey* in blank, and except the engraving, signatures, and nothing was said about any rate of interest.

Answer 10. Nothing recurs to my recollection that would be important to either of parties, except that Davidson and Ellis first become stockholders in said concern about the middle of Feb'y, 1856.

Answer 11. I do know that J B. Ellis *rote* a letter to J. J. McMahon in answer to one from him, in relation to said blank bills of exchange, and I read the letter before it was mailed, and the purport of it was as follows: That he had no *rite* to fill them up; that they had never authorized him to fill them up; and that they forbid him doing so. The date, as near as I recollect, was about the first Feb'y, 1857.

Answers to cross-interrogatories:

Answer 1. I am not.

Answer 2. My means of information is that I was present when the parties made their contract and arrangement; I never *hand* any interest or connection with it in any way whatever.

Answers to 3d, 4th, and 5th. I know nothing of these matters inquired after.

Answer 6. I know nothing on that subject than already stated; further deponent saith not.

W. H. SLOVER.

I, Hume F. Hill, of the city of Memphis and State of Tennessee, a commissioner duly appointed to take the depositions of the said L. D. Stickney and W. H. Slover, witnesses whose names are subscribed to the foregoing depositions, do hereby certify that previous to the commencement of the examination of the said L. D. Stickney and W. H. Slover, as witnesses in the said suit between the said W. L. Lanier, curator of J. J. McMahon, dec'd, plaintiff, and the said Thos. J. Davidson, Jos. B. Ellis, and Josiah Locke, defendants, they were duly sworn to testify the truth in relation to the controversy between the said W. L. Lanier, curator of J. J. McMahon, dec'd, plaintiff, and the said Thos. J. Davidson, Jos. B. Ellis, and Josiah Locke, defendants, so far as they should be interrogated concerning the same; that the said depositions were taken at my office, in the city of Memphis, in the county of Shelby, and State of Tennessee, on the 8th day of July, A. D. 1858; and that after such depositions were taken by me as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witnesses; and that thereupon the same

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were signed and sworn to by the deponents, L. D. Stickney and W. H. Slover, before me, the oath being administered by me as such commissioner, at the place and on the day and year last aforesaid.

Given under my hand and seal of office, at Memphis, this 8th July, 1858.

HUME F. HILL,
Commissioner, &c.

Amended deposition of L. D. Stickney is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Eighth Circuit and Western District of Tennessee,
City of Memphis, ss.

I, Hume F. Hill, a commissioner duly appointed on the 15th October, 1851, by the circuit court of the United States for the *eight* civil and western district of Tennessee, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,' passed March 1st, 1857," and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do certify that, in pursuance to the amended agreement to take the amended deposition of L. D. Stickney on the 14 day of December, A. D. 1858, I was attended by the witness, who is of sound mind and lawful age, and the witness was by me carefully examined and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witness; and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up, direct*ed*, and forwarding the same, with my own hand, to the court for which the same was taken.

I further certify, that I am not of counsel or attorney to either of the parties in said deposition and caption named, or in any way interested in the event of the said civil cause.

In testimony whereof, I have hereunto set my hand and seal, this 14 December, 1858.

HUME F. HILL,
U. S. Commissioner Circuit and District Court United States
for the Eighth Circuit and Western District of Tennessee.

Answer cross-examinations, 3d interrogatory:

Answer 1st. I only know the fact from letters written by J. J.

McMahon to R. M. Kirby, president of the Cincinnati and Little Rock Slate Company, and to myself; after diligent search I can find but four letters addressed to me, which are herewith filed, numbered answer 1, 2, 3, and 4.

To 4th interrogatory:

Answer 2d. He was not present, and had nothing to do with the drawing or signing of the bills of exchange.

L. D. STICKNEY.

Sworn to and subscribed before me, and I do certify that the witness placed the same in my hands, as his amended deposition to that taken 8th July, 1858, herewith returned.

Given under my hand and seal of office, this 26th November, 1858.

HUME F. HILL,
Commissioner.

Further answer to 3d interrogatories:

In addition to what I have stated in my original answer to this interrogatory, I state I have now before me and file herewith a paper which purports to be a copy of said J. J. Mahon's account against R. M. Kirby, as president of the Cincinnati and Little Rock Slate Company. I notice charges in said account for fifteen different drafts, amounting in all to say $23,000, stated to be drawn in my favor, and by me on said McMahon, and accepted and paid by him. These drafts were drawn by me, or in my favor, at the instance and request of R. M. Kirby, president of said slate company, in pursuance of an agreement he had made with McMahon to become connected with said slate company as principal agent or treasurer at New Orleans, and were intended to raise money, and put in operation and carry on a banking business under the charter of the Cincinnati and Little Rock Slate Company at Memphis and New Orleans. McMahon accepted and paid said drafts with a full understanding that the money was to be used for that purpose. The means of the slate company, as well as the money raised from McMahon on those drafts, were at that time being used by the president, Mr. Kirby, to build up and establish the Memphis and New Orleans banking-house. It was not contemplated to do anything but a nominal business at Little Rock. This was understood by McMahon, and approved by him.

Further answer to 4th interrogatories:

In my original answer to the interrogatories, I stated, in relation to signing said blank, that it was done at the suggestion of R. M. Kirby to relieve McMahon from True's theft; I have since had repeated conversations with R. M. Kirby and others who were present, and they are all positive that I was mistaken as to the time; R. M. Kirby has called my attention to another time, several days afterwards, when he made the statement. Probably I may have been in error about the time, and that McMahon's name was not used at the time of signing the drafts, as R. M. Kirby is positive that the conversation occurred some time afterwards; he is most likely correct; R. M. Kirby is the only one of the parties who signed the bills of exchange that I heard mention McMahon's name in connection with the matter, and he, as far as I recollect, mentioned it but once, and I am quite certain none of the other parties were present.

L. D. STICKNEY.

Sworn to and subscribed before me, and I do certify that the witness placed the same in my hands, as his amended deposition to that taken 8th July, 1858, herewith returned.

Given under my hand and seal of office, this 26th November, 1858.

HUME F. HILL,
Commissioner.

The defendant then offered to introduce as a witness generally in the cause J. B. Ellis, the payee and endorser of the bills of exchange sued on, to whose competency as a witness the plaintiff excepted, which exception was sustained by the court so far as to deny to the defendant the right to prove by said Ellis any fact or circumstance that existed or transpired prior to or at the time of the endorsement on said bills of exchange by said Ellis tending to invalidate or discredit said paper, and to which opinion and judgment of the court, so excluding said Ellis *of* a witness, the defendant excepted at the time, and thereupon said defendant proceeded and proved by said Ellis that some time, the last of Jan'y or early part of February, 1857, he wrote a letter to McMahon, plaintiff's intestate, in the name of himself and the defendant, T. J. Davidson, forbidding said McMahon from filling up the bills of exchange sued on, and stating to him that Kirby had no right to use said bills of exchange in the manner in which he had attempted to use them, which letter he sent by mail to said McMahon. Defendant then read as evidence before the jury the following letters written by plaintiff's intestate to the persons which they respectively addressed, and which the plaintiff admitted were in the handwriting of the said McMahon, which said letters are in the words and figures following, to wit:

NEW ORLEANS, *Feb'y* 22, '56.

L. D. STICKNEY, Esq.

D. SIR: I have not been able to sell your first shipment of cotton as yet. Our market has had a downward tendency ever since your cotton arrived. Mr. Kirby saw the samples. I can tell you that it was a bad purchase; he saw my list, which embraced your 96 bales; after holding off several days at higher prices, I offered to take $9 for the best; could not get it; yours is not as good as the average. The 30 bales pr. "Belfast" has arrived; my samples are not in yet; yours look better than the first shipment. I would avoid the purchase of middling to good middling cotton; 8 to 8¼ for the former, 8, 8½ to 8¾ for the cotton; above these rates you will lose money. I would also advise shipping in planters' marks.

Very respectfully,
J. J. McMAHON.

NEW ORLEANS, *May* 19, '56.

L. D. STICKNEY, Esq.

D. SIR: I have to advise of the sales of the shipment 96 bales cotton, at 9⅛ c. It was hard work to make this cotton pay out. Mr. Kirby saw it, and knows all about it.

Very respectfully,
J. J. McMAHON.

NEW ORLEANS, *Ap'l* 28, '56.

R. M. KIRBY, Esq., pres't.

DR. SIR: I am really astonished and mortified that you should keep up your system of drawing upon me. This matter must be stopped. I cannot accept another dollar until you place me in funds, which I want immediately. You have gone far beyond authority, and I rely upon you to see that this money is forthcoming at an early day.

Very respectfully,
J. J. McMAHON.

NEW ORLEANS, *April* 7, '56.

R. M. KIRBY, Esq.

D. SIR: Your despatch 3d is just to hand; if you have no other bills than *intend* falling due this month, the 75 bales pr. Ingomar will in and about pay the acceptances of $1,000—say $3,000—due 17-20, 18-21 and 21-24. I sent you a statement a few days since. Since then I have accepted draft $1,000, due 28-31 May; and this day, draft $3,000, 30-3 July. I would suggest, if you can buy "New Orleans" middling at 8½ c. with your bank notes, that it will pay.

Very respectfully,
J. J. McMAHON.

I would suggest that you have your notes redeemed by the Union Bank; it will give the notes credit from home and not be so liable to be sent forward.

McM.

L. D. Stickney's despatch 20, rec'd 4th, stated he "had shipped 240 bales this day." As yet only 75 rec'd.

New Orleans, *May* 7, '56.

R. M. Kirby, Esq.

D. Sir: I was mortified this morning to find my name to the tune of $24,000 published in the Memphis papers. I acted in this matter with great reluctance, and on your account only; gave the acceptance for $5,000, with the assurance on your part that I would always be kept in funds. Your favor in regard to your lending your name has resulted just as I anticipated; just a draft of $5,000 was presented, and then one of $3,000 without a word of advice. I hesitated; felt that I ought to let the paper go to protest; then thought it might injure the credit of your concern; had I then known that this paper had been used without your knowledge I would not have accepted; hence you see the reliance I put in you and you alone; previous to my accepting this paper I received a despatch from you, stating "you had sent invoice pr. Simonds & Hill $5,000, and would send $5,000 more in a few days;" this *thought* was shipments of cotton; instead of $10,000, I received $2,000; unless you see funds are remitted me forthwith you will do me a very serious injury, if you have not already done so by the publication, as before stated. I rely upon you alone to see that I am not made to suffer in this matter; act promptly, so that I may be at ease. I want you to return me the acp't $5,000 that I gave you for yourself and Ferguson. Cancel the paper and send it to me. Write me fully by return mail.

Your friend,

J. J. McMAHON.

Courtland, *July* 25, '56.

R. M. Kirby, Esq.

D. Sir: Your favor of 22d is to hand by this morning's mail. I found Fortunatus quite ill with the flux, on my arrival home. Had he been well it was my intention to have started for Memphis on Monday last, for the purpose of bringing my unfortunate matters to a close; and if that could not be done I intended bringing suit to the first court; I am heartily tired of promises, and have no faith in Mr. Locke's remitting me a dollar; when he does, I will with the greatest pleasure advise you of the receipt. I would prefer his making the *mittance* to me direct to this office. I wish you so to advise him; I will know then that it has been made. I wish you would ascertain from A. C. Blair what arrangement he designs making for his draft—$2,000—due and paid 26th June. I wrote the parties twice; they did not have even politeness enough to answer my letters. Mess. Aydletts advised me that Ferguson had not placed me amongst the preference creditors, as you thought he had done, and they feared I would not be reached at all. You say you have not heard from him for a month. He will land in the penitentiary some day, if he gets his just deserts, and the sooner the better, for , if I am allowed to judge by his conduct for the last few months. William received the mattress. Advise me what progress is making in the Missouri estate matter. I think it would be well for me to fill up all the drafts you sent me for my protection, and let them go to protest. What say you?

Very respectfully,

J. J. McMAHON.

NEW ORLEANS, *Ap'l* 3, '56.

L. D. STICKNEY, Esq.

D. SIR: I am in rec'pt your favor 29th Mar., enclosing check on Bank New Orleans for six hundred dollars, which am't is to cr. your office. I have this day accepted R. M. Kirby's (pres't) draft for $1,000, at 60 d., from 29th Mar.

Very respectfully,

J. J. McMAHON.

NEW ORLEANS, *March* 21, '57.

R. M. KIRBY, Esq.

D. SIR: I have sent E. W. Munford a draft for $8,992 $\frac{44}{100}$ to sue upon. This was the balance after the three drafts of $1,000, upon which I design sueing Locke. He failed to accomplish his arrangements here, and left the city without coming to see me. If necessary I will instruct Munford to make you a witness. Davidson and Ellis evidently design getting out of the matter if they can; but for the aid kind friends in loaning us their names, I would have gone by the board. These matters, with others, would have caused me to have suspended. I want you to give Munford all of the names of the stockholders, the charter under which you acted, and all the information you can, so that I may obtain judgment on my debts. Let me know what you are doing in the land matters, and the prospect of Finry's making the $5,000 out of Ferguson's affairs. I expect to be in Memphis about 1st August to rent an office, and make my arrangements for next season.

Very respectfully,

J. J. McMAHON.

NEW ORLEANS, *May* 4, '57.

Doct. J. B. ELLIS:

D. SIR: Your favor 27th April is just to hand. Locke was here some time ago; denied that any claims had been put in his hands to apply to the debt due me; promised to call and arrange the amount due by Col. A. C. Blair; failed to do so; left the city without my seeing him again. Nothing has been paid on my ac. against

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R. M. Kirby, as pres't; some $11,000 due on that score; sent part, say $8,000, to sue upon.

Very respectfully,

J. J. McMAHON.

NEW ORLEANS, *Dec'r* 13, '56.

R. M. KIRBY, Esq.

D. SIR: I have not had the pleasure of hearing from you since I left Memphis. I remained at Courtland some ten days after I wrote to you of my return. I am in receipt of a letter from J. Locke, dated 1st Dec'r, in which he says, "That he cannot remit me until after 1st Jan'y." I presume this is on a'c of the Blair draft, although he don't say so. Unless I hear from you satisfactorily in a short time, I must use the drafts you remitted me last summer. I want the money badly; can't do without it any longer.

Very respectfully,

J. J. McMAHON.

NEW ORLEANS, *Mar.* 23*d*, '56.

L. D. STICKNEY, Esq.

DR. SIR: I intended sending your sales to-day, but my bookkeeper being unwell prevents my doing so. A gentleman has just called on me to redeem $100 of your money; advise me by return mail if you design placing funds either at the Union Bank or at my office for that purpose. I cannot redeem any more unless you make provision to reimburse me.

Very respectfully,

J. J. McMAHON.

NEW ORLEANS, *Feb'y* 9, '57.

R. M. KIRBY, Esq.

DR. SIR: Your favor 28th Jan'y came to hand by this morning's mail. I received a letter from Davidson & Ellis some days since, in which they deny that you had the right to use the drafts sent to me. They stated that they had agreed to endorse for some $5,000 or $6,000, which they had done to Cherry, and that they would resist the payment of the drafts held by me. As a last resort I will start a young man up on the Ingomar to see what he can get out of Locke on this and the Blair draft; as soon as he returns I will report what has been done.

I see no use in my waiting any longer; and as soon as Lyon returns I will send up my claims for collection. I wrote to Davidson & Ellis in reply to their letters, in which I stated that I would sue all the parties, both on the drafts and the notes; the costs will be very heavy on the latter; but I don't think they can go into and quit a concern without a publication in the papers. I wish you would call and see what I did say to them. Doct. Ellis may feel disposed, as you state, to make a settlement; this he desires in the letter of Davidson & Ellis. If I am compelled to sue I will have to go the whole figure and include L. D. Stickney, H. Martin True and R. C. True. I have the copy of the resolutions passed 25th Jan'y, '56, when they sent you down to make arrangements to carry on the bank.

Very respectfully,
J. J. McMAHON.

NEW ORLEANS, *Ap'l* 1, '56.

R. M. KIRBY.

D. SIR: You will find from the ac's sales rec'd Mr. Stickney that your office owes me a cash balance of upwards of $500. This am't includes $100 redeemed notes. I herewith send you dates my several acceptances maturing this month.

Very respectfully,
J. J. McMAHON.

R. M. Kirby,	pr.	L. D. Stickney,	17–20	$1,000
"	"	"	"	1,000
"	"	"	18–21	1,000
"	"	"	21–24	1,000
				$4,000
"	"	"	5–8 May	1,000
"	"	"	18–21 "	1,000

Defendant then presented himself as a witness in the cause, and by his counsel insisted upon his competency under the statute of Mississippi, in such cases made and provided, to whom as a witness plaintiff objected, on the ground of his incompetency, which objection was sustained by the court, and the said defendant excluded as a witness, to which opinion and judgment of the court in excluding said defendant, by his counsel, excepted at the time. Plaintiff then read the following letter, to wit:

MEMPHIS, *June 23d*, 1856.

Col. J. J. McMAHON:

DR. SIR: I received your two last letters, one on Saturday, and the other yesterday, Sunday, and one this morning from Mr. Locke, who has just returned from Arkansas; received on our claim three thousand dollars, and much to my mortification learned that he had not forwarded you the money; I wrote him again this morning to forward the am't he had on hand to you without delay, and I wish to get our ac't from you, and if we are not able to forward the am't due you in money, to give you bills that you can use until we can get the balance of the money; send me the account immediately; I wish to get the parties bound up in a different shape for the amount we will be due you; I am using every effort to protect you, and determined you shall be, if in my power to effect it; the drafts I sent you was for you to use if you could; if not, to hold all parties bound for your protection. Now, if I can get them to give you accepted bills for the balance we may due you, that you can use, we will be able to go forward and meet them; this thing distresses me nearly to death; you can imagine my situation; I have to work for your protection, and the other parties are looking to me to prevent them from losing, if possible, and the public is scanning my cause; altogether you see I am in a fix. The business of F. and N. will give any amount of trouble; their trust is very unsatisfactory, and will bear very unequally upon many of their creditors; it has occurred through mistake, I think, and not by design; I wish I could see you and talk with you about the business; I have in the last few days been treated most rascally by another party taking advantage of my confidence, for which I have had to use some very severe language, which may lead to a personal difficulty, which is very fashionable here, and I assure you I am not fond of them; but I am determined, if I can't get justice in no other way, to risk the consequences of any kind of a difficulty. Rather than suffer myself further imposed upon, I had rather die than suffer further sacrifices. I will consult freely with Mr. Ayalcet, who I find is willing to interest himself for your interest, and the very best thing that can be done for you shall be done. Ferguson & Neil has not placed you, as I first thought, amongst the preferred creditors; consequently it will be a good while before I can reach your claim; I am very much afraid the trust will not pay out, notwithstanding such a surplus reported; I have commenced suing indiscriminately, which will soon test the responsibility of the claims.

I will write again in a few days.

Very truly your friend,
RICH'D M. KIRBY.

You send me a draft in favor of Mr. Trezvant, at twenty days, for am't due him, and I will pay it. Mr. T. has gone out to his farm; he left directions for me to send the papers out to him.

The foregoing was all the evidence in the cause; and thereupon the court proceeded and charged the jury as follows, to wit:

1st. If the jury believe from the testimony that McMahon's object in advancing his money was to enable *to* company to do an unlawful act, (and the putting into operation a banking company to issue or circulate bills, in violation of the act of the Tennessee Legislature of 1827, was an unlawful act,) then the jury must find for the defendants.

2d. If, however, after the company had gone into operation, the bills sued on were received by McMahon for the purpose of enabling the company to continue or keep up their business, this knowledge of the use intended to be made of the money did not vitiate the bill, and you will find for the plaintiff.

3d. If the bills were not given for an unlawful purpose, viz: to put in operation a banking company in violation of the law of Tennessee, the jury will find for the plaintiff.

4th. If at the time the bills were given, the holder, McMahon, knew that the money would be used for the purpose of carrying on a banking company, contrary to the laws of Tennessee, and if the banking company was then in operation, then the consideration of the bill is not affected by the use to be made of the proceeds of the bill, and the plaintiff is entitled to recover.

5th. The signing of a bill of exchange in blank is the giving of the holder an unlimited authority to fill it up at pleasure, and the party so drawing, or endorsing, is bound by the act of the party filling up the same.

6th. If the bills sued on were signed in blank and delivered to Kirby to be sent in blank to McMahon, that would authorize him, McMahon, to fill up the bills and insert any rate of interest that was lawful, and the jury should find for the plaintiff.

7th. But if the jury believe from the testimony that the bills were delivered in blank to Kirby, without any understanding that they were to be sent blank as they were to McMahon, then McMahon had no right or authority to fill them up, and you should find for the defendant.

8th. If the bills went into the possession of McMahon according to agreement in blank, without any specification as to interest, then McMahon had a right to insert any rate of interest lawful in the State of Louisiana, where the bills sued on in this case were filled up, and any rate of interest, from 5 to 10, is legal in Louisiana, by contract, and McMahon had a right to insert 8 per cent. interest, as part of the contract, if, as I have already said, he received the bills by the consent of the defendant without any stipulation as to interest.

9th. After McMahon received these bills, if he did so in blank, by the consent of defendant, and came under liabilities for the company, in consideration of said bills, then the defendant could not revoke his authority to fill up the bills and have them protested.

10th. If the bills went into the hands of McMahon in blank, by the consent of the defendant, to protect him against liabilities that he was then under or might thereafter come under, for the company, to whom they were loaned by the defendant, then McMahon had a right to fill them up for an amount equal to his liability.

To which said charges, and to each one of them, the defendant

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at the time excepted. Defendant, by his counsel, then moved the court to give to the jury an additional charge, in the words and figures following, to wit:

That if the jury believed from the evidence that the debt, to cover or secure which the bills of exchange sued on were filled up, became due to plaintiff's intestate for sums of money advanced by said intestate to R. M. Kirby, president of the Little Rock and Cincinnati Slate Company, or to any other person, for the purpose of setting on foot or aiding in the establishment of a banking concern or house in the city of Memphis, Tennessee, in violation of the laws of the said State of Tennessee, then the said bills of exchange are illegal and void, and the jury should find for the defendant, though the said banking institution may have been previously organized and under way before and at the time said bills of exchange were signed by defendant.

Which additional charge the court refused to give, to which refusal the defendant at the time excepted; and to save the benefit of all the foregoing exceptions, the defendant, before the jury retired from the box, by his counsel tendered this his bill of exceptions, and prayed that the same might be signed and sealed by the court and be made a part of the record of the cause; which is accordingly done.

S. J. GHOLSON. [SEAL.]

And afterwards, to wit, on the 17th day of May, 1860, the defendant filed his writ of error bond in this cause, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Mississippi, ss.

Know all men by these presents, that we, Thomas J. Davidson and J. B. Ellis, are held and firmly bound unto W. L. Lanier, curator of J. J. McMahon, dec'd, in the just and full sum of five hundred dollars, to be paid to the said W. L. Lanier, curator, &c., his lawful attorney, executors, administrators or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this the day of , A. D. one thousand eight hundred and sixty.

Whereas, lately, at a term of the said district court, commenced and held at the town of Pontotoc, in said State, on the first Monday of June, A. D. 1859, in a suit depending in said court, between the said W. L. Lanier, curator, &c., plaintiff, and the said Thomas J. Davidson, defendant, judgment was rendered against the said defendant, and the said defendant having obtained a writ of error from the Supreme Court of the United States, and filed a copy thereof in the clerk's office of the said district court, to reverse the judgment in the aforesaid suit, and a citation directed to the said W. L Lanier, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Thomas J. Davidson shall well and truly pay and satisfy all such costs as upon an affirmance of the said judgment may be adjudged to the defendant in error, then the above obligation to be void, else to remain in full force and virtue.

THOS. J. DAVIDSON, [SEAL.]
J. B. ELLIS. [SEAL.]

Sealed and delivered in presence of—
O. DAVIS,
H. H. POWERS.

Approved by—

I approve of the within bond and security.

Given under my hand, this the 11th day of May, 1860.

S. J. GHOLSON,
Judge U. S. D. C. for Miss.

Filed in my office this 17th May, 1860.

R. W. EDMONDSON, *Clerk.*

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Judge of the District Court of the United States for the northern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, between W. L. Lanier, curator of J. J. McMahon, plaintiff, and Thomas J. Davidson, defendant, a manifest error hath happened, to the great damage of the said Thomas J. Davidson, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-nine.

R. W. EDMONDSON, *Clerk.*

Allowed by,

S. J. GHOLSON,
Judge U. S. D. C. for Miss.

Upon which said writ of error is the following endorsement, to wit:

A copy of the writ of error lodged in pursuance of the statute of the United   in such case made and provided, for the above named W. L. Lanier, curator, &c., defendant in error.

J. W. C. WATSON and
O. DAVIS,
Att'ys for Pl'ff in Error.

May 17th, 1860.

Citation.

THE UNITED STATES OF AMERICA.

To W. L. Lanier, curator of J. J. McMahon, dec'd, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the northern district of Mississippi, wherein Thomas J. Davidson is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Sam'l J. Gholson, judge of the district court of the United States for the northern district of Mississippi, this first Monday of December, in the year of our Lord one thousand eight hundred and fifty-nine.

S. J. GHOLSON.

Upon which said citation is the following endorsement, to wit:

Service of within citation acknowledged August 22d, 1860.

HUGH MILLER,
Att'y for W. L. Lanier, Curator, &c.

UNITED STATES OF AMERICA,
Northern District of Mississippi.

I, Robert W. Edmondson, clerk of the district court of the United States for the northern district of Mississippi, do hereby certify that the foregoing eighty pages contain a full, true, and perfect transcript of the original papers and proceedings filed and had in the cause therein stated, as fully and completely as the same remain of record, and on file in my office; and also of the writ of error bond, writ of error, and citation, and the endorsements of the judge and clerk thereon.

In testimony whereof, I, Robert W. Edmondson, clerk of said court, have hereunto set my hand and affixed the seal of said court, at office, in Pontotoc, this the 3d day of September, A. D. 1860.

[SEAL.]

R. W. EDMONDSON, *Clerk.*

Filed 8th December, 1860.

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SUPREME COURT U. S.—No. 52.

DAVIDSON vs. LANNIER.

Brief of Deft. in Error on Motion to Dismiss.

CASE NO. 52.

The judgment was rendered on the 5th Dec., 1859. See p. 8. The Writ of Error is allowed and tested first Monday of Dec., 1859, but is not lodged with the Clerk until 17th May, 1860, (page 57.) The citation returned in this case is tested first Monday of Dec., 1859, and is served 22d August, 1860. See p. 57.

The Writ of Error bond is filed 17th May, 1860, but approved by the Judge 11th May, 1860—p. 56.

We object to the Writ of Error in this case.

1st. Because assuming that the Writ of Error and citation issued on the 1st Monday of Dec., 1859, when they are tested then it would appear from the citation returned in case No. 51, that the Plaintiff in Error had subsequently sued out a citation on 16th April, 1860, which the Defendant in Error could only regard as a waiver of the first citation, (both being served on him,) in this case. The result of this would be to show that the citation of the 16th April, 1860, and filed in Case 51, is to be regarded as the only citation in this case. If so, it did not accompany the Writ of Error, whether you regard the date of its teste, (the 1st Monday of Dec., 1859,) or the day of its being lodged with the Clerk, (17th May, 1860,) and that is a fatal objection.

1 Cranch, 365.

Bailiff *vs.* Tiffling, 2 Cranch, 214.

Nor is that citation returned with the Record.

7 Peters, 221.

The Writ of Error is not considered as brought until lodged in Clerk's office on 17th May, 1860.

11 How. 207.

If that is to be considered the bringing of the Writ of Error, and there is no evidence of the time when the citation tested 5th Dec., 1859, was signed, or if the only citation in this case is to be considered the one of 16th April, 1860, then the Writ of Error and citation did not accompany each other.

1 Cranch, 365.
2 ———, 214.

2d. The appeal bond is approved on the 11th May, 1860, before the Writ of Error was lodged, and the Judge is presumed to have signed the citation when he approved the bond, that is before the Writ of Error was brought.

3d. There is nothing in the Record to show when the Writ of Error or citation in fact issued, and whether they accompanied each other; nor to show that when the Judge signed the citation, he took the appeal bond approved 11th May, 1860.

The requirements of the Act of Congress must be strictly observed.

6 How. 112.

The Writ of Error in both cases must be under seal of the District Court, and should be annexed to be transcript, which is not done, but it comes up as a loose and detached paper.

22 How. 47—8.
3 Dall. 401.
1789, ch. 20, sec. 22.

On the Merits.

We submit the same views on the merits as are stated on our brief in No. 51, which will answer for this case, as the questions and the defence are the same.

We submit that both cases should be affirmed.

R. J. BRENT,
For Defendant in Error.